

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

October 11, 2012

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
Senator David R. Hastings III, Chair
Representative Joan M. Nass
2. Introduction of Law School Extern
Katherine Lybrand
3. Introduction of Public Access Ombudsman
Brenda Kielty
4. Reports of Subcommittees; Discussion of Subcommittee Recommendations
 - Bulk Records Subcommittee
 - Encryption Subcommittee
 - Legislative Subcommittee
 - Public Records Exception Subcommittee
5. Comments on FOAA Submitted to Advisory Committee
6. Other?

Adjourn

Hon. David R. Hastings III, Chair
Hon. Joan M. Nass
Perry Antone
Shenna Bellows
Percy L. Brown, Jr
Michael Cianchette
Richard Flewelling
James T. Glessner



A. J. Higgins
Mal Leary
William Logan
Judy Meyer
Kelly Morgan
Linda Pistner
Harry Pringle
Mike Violette

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE
Encryption Subcommittee

September 16, 2012

Dear Senator Hastings,

As you recall, the Encryption Subcommittee was established to consider the concerns raised by the Maine Freedom of Information Coalition in its letter dated April 27, 2012 about the possibility that police and emergency service providers may begin to encrypt more of their radio communications after completing the federally mandated switch from an analogue to a digital radio system. We have reviewed the current encryption practices of Maine's law enforcement agencies and first responders and considered how moving to a digital radio system may impact those practices. We also reviewed federal and state laws that may apply to the use of encryption to help guide us in our deliberations. This letter contains a brief outline of our work and our unanimous recommendations to address the concerns raised by the Maine Freedom of Information Coalition.

On July 16, 2012 and August 15, 2012, the Encryption Subcommittee met in room 438 of the State House and received testimony from Suzanne Goucher representing the Maine Freedom of Information Coalition and the Maine Association of Broadcasters; representatives from the Maine State Police, Department of Public Safety, including Col. Robert Williams (Chief of the Maine State Police), Lt. Col. Raymond Bessette (Deputy Chief), Lt. Don Pomelow (Commanding Officer of Troop C), and Major Grotton (Special Services); and Wayne Gallant, of the Office of Information and Technology. In addition, we directed our staff to work with Assistant Attorney General Laura Yustak Smith to review federal and state laws and policies that may pertain to the encryption of public safety radio transmissions; staff reported those findings to us at our last meeting. Summaries of our meetings may be found at <http://www.maine.gov/legis/opla/righttoknowsums.htm>

Based on our review we make the following unanimous recommendations:

1. That the Right to Know Advisory Committee not propose any statutory changes to address issues raised in the Maine Freedom of Information Coalition's letter dated April 27, 2012; and

2. That the Right to Know Advisory Committee send a letter to the Board of Trustees of the Maine Criminal Justice Academy requesting that it consider creating a model encryption policy for consideration by local law enforcement agencies that reflect the current practices and requesting that the board report back to the Advisory Committee on any decisions or actions taken pursuant to this request.

Although all members of the Subcommittee agreed that current encryption practices are not an issue in Maine, members were concerned about the potential for law enforcement agencies to use digital technology to encrypt transmissions to which the public should have a right of access. Accordingly, if current practices change significantly it would be appropriate to revisit this issue.

We appreciate the opportunity to delve into this matter for the Advisory Committee. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Pistner', with a stylized flourish at the end.

Linda Pistner, Chair

cc: Members, Right to Know Advisory Committee

Legislative Subcommittee

Draft: Suggested Revisions to Frequently Asked Questions on www.maine.gov/foaa;
Links to Records Retention Guides Prepared by State Archives

What records must a public officer or agency keep, and how long do they have to keep them?

The Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule or in the transaction of its official business. 5 MRSA § 92-A (5) How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state agencies and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention. 5 MRSA § 95 (7). The Maine State Archives provides guidance on the management and retention of state agency and local government records, including schedules for how long records are retained, on its website at <http://www.maine.gov/sos/arc/records/state/index.html>

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages. Guidance on the retention of email and digital records can be found at <http://www.maine.gov/sos/arc/records/state/emailguide0712.pdf>

Legislative Subcommittee
Draft: Using technology to conduct public proceedings

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section. The policy may establish circumstances under which a member may participate when not physically present.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. Each member of the body participating in the public proceeding is able to hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

E. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

F. All votes taken during the public proceeding are taken by roll call vote.

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually

presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

2. **Voting, quasi-judicial or judicial proceeding.** A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote on any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. **Exception to quorum requirement.** A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. **Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

PART B

Small Enterprise Growth Fund Board Proposed amendment to exempt from §403-A

Sec. B-1. 10 MRSA §384, sub-§5 is enacted to read:

5. **Meetings.** The board shall have a physical location for each meeting. Notwithstanding Title 1, section 403-A, board members may participate in meetings by teleconference. Board members participating in the meeting by teleconference are not entitled to vote and are not considered present for the purposes of determining a quorum, except in cases in which the chair of the board determines that the counting of members participating by teleconference and the allowance of votes by those members is necessary to avoid undue hardship to an applicant for an investment.

Finance Authority of Maine No change

Sec. B-2. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission No change

Sec. B-3. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. *Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted.*

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board Proposed amendment to exempt from §403-A

Sec. B-4. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. ~~The Notwithstanding Title 1, section 403-A, the board may use video conferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board Proposed amendment to exempt from §403-A

Sec. B-5. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. ~~The Notwithstanding Title 1, section 403-A, the~~ board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the

4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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Legislative Subcommittee

Draft: General Agency Confidential Individual and Business Records Template

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X -is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the [board, agency, authority, etc.] are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Records containing any information acquired by the [board, agency, authority, etc.] or a member, officer, employee or agent of the [board, agency, authority, etc.] from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the [board, agency, authority, etc.] if the applicant or recipient is an individual;

B. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.], to whom the record belongs or pertains has requested be designated confidential; and

(2) The [board, agency, authority, etc.] has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business, invasion of privacy, or other significant detriment to any person to whom the record belongs or pertains;

C. A financial statement or tax return;

D. A record that contains an assessment by a person who is not employed by the [board, agency, authority, etc.] of the credit worthiness or financial condition of any person or project;

E. A record obtained or developed by the [board, agency, authority, etc.] prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the [board, agency,

authority, etc.], or in connection with a transfer of property to or from the [board, agency, authority, etc.]. After receipt by the [board, agency, authority, etc.] of the application or proposal, a record pertaining to the application or proposal is not confidential unless it meets the requirements of the other paragraphs of the subsection; and

F. Non-public, personally identifiable information of an individual, including a consumer.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. **Exceptions.** Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information [, including:

(1) Names of recipients of or applicants for financial assistance, including principals, where applicable;

(2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

(3) Descriptions of projects and businesses benefiting or to benefit from the financial assistance;

(4) Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;

(5) Number of jobs and the amount of tax revenues projected or resulting in connection with a project;

(6) Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and

(7) Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance].

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, **except that the [board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;

E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section;

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

Draft for Review by Advisory Committee October 11, 2012
Recommended by Public Records Exception Subcommittee

Public Records Exceptions Subcommittee

Proposed draft letter to Department of Health and Human Services

Re: Title 22, section 3188, related to the Maine Managed Care Insurance Plan
Title 22, section 3192, related to the Community Health Access Program

Mary C. Mayhew
Commissioner
Department of Health and Human Services
221 State Street
Augusta, Maine 04333-0040

Dear Commissioner Mayhew:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee reviews existing public records exceptions in the statutes. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review of exceptions in Titles 22 through 25 during 2011, the Subcommittee considered 2 exceptions in Title 22 relating to records collected or maintained by programs authorized within the Department of Health and Human Services that have never been implemented:

- Title 22, section 3188, subsection 4 relating to the Maine Managed Care Insurance Plan Demonstration program for uninsured individuals; and
- Title 22, section 3192, subsection 13 relating to medical data of the Community Health Access Program.

Last year, the Department of Health and Human Services and the Legislature's Health and Human Services Committee recommend to the Subcommittee that all of sections 3188 and 3192 be repealed, including the specific confidentiality provisions, because the statutes have never been used. However, the Subcommittee did not include language to repeal these sections in proposed legislation because the underlying policy issues are beyond the scope of the Subcommittee's charge. We are writing to inform you of the Subcommittee's decision so the department may consider whether to recommend that the statutory provisions authorizing the Maine Managed Care Insurance Plan Demonstration program and the Community Health Access Program be repealed in any proposed legislation put forward by the department for consideration by the 126th Legislature.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch, Colleen McCarthy Reid or Curtis Bentley, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Bulk Records Subcommittee

The Legislative Subcommittee met on August 23, 2012.

Issue: Review of Law Court Decision in *MacImage* Case and Action Taken by Legislature in Response to Decision

- Advisory Committee requested that the Subcommittee revisit the issue of bulk data in light of the Law Court's decision in the *MacImage* case to close the "loop" on the discussion and determine whether additional action and/or recommendations on the issue are needed
- Last year, the Bulk Records Subcommittee did not make a specific recommendation related to bulk data given the unresolved court case
- In *MacImage*, the Law Court found that the specific statute in Title 33 regarding the registries controlled the dispute over the reasonableness of the fees charged by the registries—not the general language of the FOAA.
- Subcommittee agreed that Law Court's decision has settled the issue with regard to the Registries of Deeds but did not provide any particular guidance for the State and local governments with regard to requests under FOAA for bulk records
- Registers of Deeds (Susan Boulay and Diane Godin) told Subcommittee Registers of Deeds are satisfied with decision and status quo
- Discussion about whether there was specific way to address issue for all State and local govts—should policy should be established that applies to all state and local government agencies?
- Noted recent legislative changes (endorsed by the Advisory Committee) that clarify an agency's responsibility under FOAA is to provide information in the medium in which it is stored; belief among members that the amendment to the law may assist agencies in fulfilling requests for bulk records
- No particular interest among members in pursuing the same approach as some other states that distinguish between requests for bulk data made for commercial and non-commercial purposes
- Sense that current law and structure seems to be working for state agencies; Subcommittee not aware of any pressing issues or concerns for State agencies about bulk data

Recommendation:

No changes in statute;

No additional action needed by Subcommittee or Advisory Committee

Legislative Subcommittee

The Legislative Subcommittee met on July 19, August 23 and September 13.

Issues:

- Application of FOA laws to Maine Public Broadcasting Network
- Status of email addresses collected by schools and towns
- Balancing the public disclosure of elected officials' email with the availability of technology and other systems to maintain records and provide public access (PL 2011, c. 264)
- Use of technology in public proceedings to allow member participation from remote locations
- Templates for drafting specific confidentiality statutes

Application of FOA laws to Maine Public Broadcasting Network

- Issue raised by the late Mike Brown when MPBN refused to provide certain financial information about employees that he requested, saying they were not "public" under the FOA laws.
- Mark Vogelzang (President and CEO of MPBN) and Jim Zimprich (MPBN's attorney) attended and provided written remarks
- Board meetings and materials open to the public, as well as annual tax filings and certain donor information

Recommendation:

No change in statute, but encourage MPBN to be more open and accommodating of requests (5-0, two abstentions)

Linda Pistner abstained: current law is ambiguous in that it includes MPBN in the open meetings portion of statute, but silent with regard to records.
Kelly Morgan abstained because she had missed most of the discussion

Status of email addresses collected by schools and towns

- Issue raised by Rep. Mary Pennell Nelson via letter; Falmouth schools received a request for parents' emails
- Discussion about whether email addresses are confidential and should they be; practical problems with redacting all email addresses from otherwise public documents
- Harry Pringle argued that probably confidential under FERPA, but should make clear; offered to prepare draft legislation
 - Review of draft; made changes, voted 4-3 to recommend draft on August 23rd, but reconsidered on September 13th to wait until the new Public Access Ombudsman Brenda Kielty could collect information to determine if it is a problem

Recommendation:

No change in statute

Public Access Ombudsman look at issue, collect information, report back (If Advisory Committee agrees, need to put request in writing)

Legislative Subcommittee

Balancing the public disclosure of elected officials' email with the availability of technology and other systems to maintain records and provide public access (PL 2011, c. 264)

- Invited David Cheever, State Archivist, to discuss issues of maintaining, storing and accessing records, especially digital records such as email
- Current best practices – rely on record retention schedules
- Everyone across the country is facing same issues with no great resolutions so far

Recommendation

Amend the Frequently Asked Questions section of FOAA webpage to address guidelines for retention of emails and digital records, including links to Archives' records manuals

Ask the Legislature to amend its record retention schedule to specifically include "correspondence"

Ask Legislature to revise training for members to include an explanation of the benefits of using the State-provided email address; but make clear that emails about legislative work are most likely public (narrow exception was added recently)

Use of technology in public proceedings to allow member participation from remote locations

- Issue has been under discussion for a few years – FOA Act is silent on whether members not present at a public proceeding of a board, commission or other body can participate via telephone, video link, etc.
- Four entities (FAME, Workers' Comp Board, Ethics Commission and Emergency Medical Services Board) have specific statutory authorization to meet via telephone or other technology in certain circumstances; all requested exemption from the proposed language
- Revised language; key provision is that an entity can use the procedure only if they have adopted a policy that authorizes it

Recommendation:

Subcommittee voted 5-2 with one abstention to recommend the revised draft to the full Advisory Committee for discussion. See draft.

Templates for drafting specific confidentiality statutes

- Another topic that has been under consideration for a few years, requested by the Judiciary Committee
- Guidance for drafting new statutes that protect information provided by an applicant for financial or technical assistance provided by the State, town or other public entity
- Received comments from FAME

Recommendation:

The Subcommittee unanimously recommended to the Advisory Committee that the template be made available as guidance for drafting new statutes.

Comments and complaints received by staff via email

Updated 10/5/2012 10:48 AM

Dear Ms. Reinsch, et al.:

We now have permission to download the link to the article "From HCQIA to the ACA" from the author. Please circulate the link -- <http://www.tandfonline.com/eprint/89fnDaXirZkWgFMuluqb/full>

DH

Dear Dwight,

You may forward the link if you wish. As for the Flexner report, it was clearly very important in prompting reforms in medical education early in the twentieth century; many historians have explored its impact. I excluded it mainly because I did not see it as a particularly important milestone in the development of the Data Bank or of quality reporting more generally.

Kristin Madison
Professor of Law and Health Sciences
Northeastern University
400 Huntington Ave.
52 Cargill Hall
Boston, MA 02115

From: Dwight Hines [mailto:dwight.hines@gmail.com]
Sent: Saturday, September 29, 2012 4:30 AM
To: Madison, Kristin
Cc: Reinsch, Margaret; McCarthyReid, Colleen; Pistner, Linda
Subject: Thank you and request for permission to circulate e-copies of your paper to Maine Right to Know Joint House-Senate Committee and

Dwight E. Hines, Ph.D.
715 Green Woods Road
Peru, Maine 04290
[207-562-4701](tel:207-562-4701)

September 29, 2012

Kristin Madison, J.D., Ph.D.
Professor of Law and Health Sciences
Northeastern University
400 Huntington Ave.
52 Cargill Hall
Boston, MA 02115

Dear Professor Doctor Madison:

Thank you for the site for your article "From HCQIA to the ACA". I downloaded and read it. It's good. Good on history and good on recommendations for merging the two existing paths.

I have two questions:

Comments and complaints received by staff via email

1) Would you grant me permission to email copies of your paper to the Maine Joint House-Senate Right to Know Advisory Committee? I believe your paper would be of help to the Committee in making their decision to continue or discontinue the present practice of exempting sentinel events in Maine hospitals from the requirements of the Maine Right to Know Act. The RTK Committee has about 15 members.

2) You did not mention the Flexner Report (1910) in your paper. Do you think its impact has been overrated?

Dwight Hines

Mon 9/24/2012 7:53 PM

Hello Margaret & Colleen,

I would like to know more about the future Right to Know Advisory Committee meetings.

Also any information about how to request the committee on change and how report a complaint.

Thanks
John McCollor

Dwight E. Hines, Ph.D.
715 Green Woods Road
Peru, Maine 04290
207-562-4701

September 22, 2012

Olga Pierce and Marshall Allen, Investigative Reporters,
Health Care Quality Project
Propublica
Dear Ms. Pierce and Mr. Allen:

Congratulations on your Pulitzer, and you are on the right track with the Health Care Project to win several more.

I was delighted to see that you and Propublica are continuing to investigate health care quality. Please note that I am in Maine, listed 25th among the 50 states in Life Tables published this past week, September 14, 2012, by National Vital Statistics Reports, Volume 60, Number 9,, CDC, and Maine's rank drops to 42nd among the states when you look at life expectancy changes from 1989-1991 to 1999-2001. Maine is 41st in life expectancy for all those aged 65, with women's expectancy much lower (Attachment 1a).

Based on the 2012 Robert Wood Johnson County Health Rankings, premature deaths in Maine are almost 1,000 years more than the national average, with the total estimate of years lost before age 75 ranging from 4,562 to 8,898 years. I have studied the methodology of RWJ and the University of Wisconsin and find it scientifically based. They did it right.

Comments and complaints received by staff via email

I have also conducted preliminary analyses of the Health Factors z-scores for the 16 counties of Maine (Attachment 1b) and using a rough cluster analyses (Attachments 2a, 2b), it appears that there are factors other than just health care causing the unacceptable, and preventable premature deaths and poor health factors. I am preparing a rough paper for the Public Health Law Research (PHLR) Annual Meeting in New Orleans in January of 2013, that indicates that some of the variance for bad health outcomes is accounted for by weak, near nonexistent enforcement of the Rule of Law in Maine. Eg, The Maine Attorney General has never prosecuted a violation of the Maine Right to Know Act and, even though last year's legislature funded a full time public records ombudsman, she just started in July and is still not answering her emails or letters. The problem is not just with failure to comply with Maine Right to Know Act by a major Maine city (Augusta — state capitol) and by Maine towns police departments (Augusta, Winthrop, et al): this year's report on Public Integrity from the Public Interest Research Group (PIRG) ranks Maine 46th and thus highly susceptible to corruption. False documents are not rare events in Maine and, again, are rarely, if ever, prosecuted.

My analyses are not finished -- I plan to include Gini coefficients and total federal funding by counties (Attachment 3) to see if these variables increase the stability of the clusters. If anyone on your team has experience with the Rule of Law indicators or stabilizing clusters, please have them contact me.

Now, the Maine Right to Know Joint House/Senate Advisory Committee has been doing a very good job and recently the Subcommittee on RTK exceptions voted to remove confidentiality for Sentinel Events in Maine hospitals. As you can see by the three pages of pdfs attached (Attachments 4-6), the Maine Hospital Association, Maine Medical Association, Maine Osteopathic Association, and the Medical Mutual Insurance Company of Maine, September 14, 2012, provided written comments to the Subcommittee on Exceptions to public records.

I was stunned by their superficial comments, poor logic, and absence of any court citations to their claims, some claims being blatantly in error, made in the comments. No mention was made of the excellent published, scientific rigorous work of AHQR or the Institute of Medicine of the National Academy of Sciences. A matrix was attached that showed the opposite of their claim that there is adequate public information already available. The comments did not include any surveys of Maine citizens or physicians to see if they wanted Sentinel events to be exceptions to the RTK act. I also found it odd, if not misleading, that the comments cited Consumer Reports as an example of the use of publicly available data but failed to note that Consumer Reports assigned every hospital they scored in Maine the equivalent of an "F".

I do admit that the recent comments are a real improvement over the testimony given by Assistant Attorney General Renee Guigard, September 29, 2011, to the Public Records Exception Subcommittee, who argued that if sentinel events "are not kept confidential, the hospitals will not report the occurrence of sentinel events, "near misses" or other instances which may or may not be sentinel events." (Attachments 7a&b) Given that life expectancy is declining in Maine (see Vital Statistics Report 2012), and given that Maine professional oversight of Physicians, et al, is weak, and given that sentinel measures serve to indicate poor practices, and that transparency is effective in increasing the quality of health care, I hope y'all, as part of your investigation, examine Maine Sentinel Reporting practices and possibly testify at the Committee Hearings.

Dwight Hines

Copy:

The Honorable Emily Cain, House Democratic Leader, State of Maine, author of Draft Bill "An Act to Strengthen Maine Ethics Laws and Improve Public Access to Information."

The Honorable Paul LePage, Governor, State of Maine, Supporter of improving Maine Ethics and Public Access to Information

Ms. Margaret Reinsch, Legislative Counsel, RTK Joint Committee

Ms. Colleen McCarthy-Reid, Analyst, Maine Office of Policy and Legal Analysis

Mr. William Schneider, Maine Attorney General

Comments and complaints received by staff via email

I was told that the reporter for the Wednesday morning meeting was Mr. Holland's daughter. Please let me know if that is false or not. In the meantime, I did not see anyone threaten your reporter, I left when the selectmen started threatening each other.

Well, because the entire meeting was recorded by Mr. Winterell, people can read the published report from the Sun Journal and compare it to the DVD. Which you have not done. Again, you are reporting based on one side, and the DVD shows the one side is not just selective, but possibly incompetent. The DVD shows your reporter agreeing not to publish about the bidding, and that was before your "editorial" decision.

I stand by my complaint on the poor reporting and will be glad to submit my complaint, along with the article published in the Sun Journal and the DVD to Journalism professors and to specialists in Journalism Ethics for their review and evaluation.

If you feel strongly about the quality of your reporting, please accept my invitation to testify in court, under oath, about how the coverage that left out so many substantive facts served your readers, the readers who do not have the time to attend the meetings, to inform them of their government and how it functions.

Finally, you may have First Amendment immunity from civil prosecution for what you publish in the Sun Journal, but you have no such protection for slander and liable for the statements you made about me in your email below. I have never "twisted" a Sun Journal report. I expect an immediate and complete apology from you in writing or I turn this over to my attorney. I hope you will agree to accept service of process by first class mail.

Dwight Hines

Copy:
MuckRock

Thu 9/20/2012 1:49 PM

Dr. Hines,

While I certainly appreciate the zeal with which you monitor FOAA issues in Maine, with all due respect I must respond to your post since you disparage not only our newspaper but our freelance reporter. First of all, the reporter is not the daughter of the chairman of the Peru Board of Selectmen, which you are well aware. Mrs. Standard has no family, personal or business relationship to Mr. Holland whatsoever and has absolutely no personal agenda to "make him happy." And, for those on your distribution list who do not know either Mr. Holland or Mrs. Standard, I don't think Mrs. Standard would mind if I point out that she is several decades older than Mr. Holland, which makes your assertion that she is his daughter absurd. Secondly, Mrs. Standard did include details about the altercation between selectmen and the complainant in the report that she filed to our copydesk. We chose, as editors have the luxury to do, to remove that information for what we consider to be an appropriate journalistic reason.

As an aside, that citizen complainant threatened Mrs. Standard and, according to witnesses, came very close to striking Mrs. Standard in the face in a failed effort to frighten her from reporting on the altercation. I know you are aware of this detail because you were there.

Your remaining assertions are equally incorrect and inflammatory for which I cannot possibly fathom an appropriate explanation. This is not the first time you have twisted a Sun Journal report for your own purposes and I ask you, reiterating my respect for your devotion to open government, to knock it off.

Sincerely,

Judith Meyer, Managing Editor/days
Sun Journal
104 Park Street
Lewiston, ME 04243

Comments and complaints received by staff via email

Sent by Dwight Hines

Thu 9/20/2012 1:17 PM

Below is a report on incomplete and inadequate reporting by the Lewiston-Sun Journal in Maine on local political meetings in Peru, Maine. I wish the complaint was not representative of the quality of reporting here but it is. I even left out some of the substantive facts, like how the reporter agreed not to write about the discussion on the flawed bids to keep the Chairman happy. And how much conflict of interest is it to have a reporter covering events who is the daughter of the Chairman?

=====

SunJournal article (<http://www.sunjournal.com/news/river-valley/2012/09/17/peru-board-gets-letter-wind-ordinance/1252617>) is a typical example of selective reporting. There was no coverage of the arguments between the selectmen on the unfairness of the bid process for a new roof, no coverage of selectmen physically threatening each other, no coverage of an additional meeting of the selectmen for Wednesday morning to discuss and decide who won the roof bid (the bidding process was flawed), and no coverage of the hostile discussion by acting Chair Holland of the petition for an article to recall selectmen, no discussion of the citizen who was there to complain about the actions of a selectman toward her in her complaint about taxes on a house that does not have a foundation, no coverage on the refusal of the Chairman to allow anyone into the executive meeting to represent her, but did allow family member of the selectman who was the basis of complaint, and no coverage of the fact that the town required all the bidders to purchase their materials from one supplier. I'd go on but this one meeting is a good example of the biased coverage by the Sun Journal of our local meetings.

I have a DVD of the meeting that Ms. Martha Winterell made and it is shocking in and of itself but what's worse is comparing the written reporting to the DVD of what actually happened at the meeting. Who protects us from the Newspapers? At what point can civil fraud be invoked for misleading the people who read the paper?

Dwight Hines

=====

additional information

Best to call or contact Ms. Winterell at 562-7113 to get the DVD directly from her.

N.B. At the Wednesday morning meeting, held without adequate notice as required by Maine Laws, the meeting also covered a petition to allow one selectman to hold her position as secretary and selectman, thus being her own boss. The town personnel rules forbid this joint employment, as does the recent vote of the town declaring it dual dipping wrong. The petition is also past the due date set by the Town Clerk of Sept 15, later changed to Sept 17, which is still past the deadli

Thu 9/13/2012 4:38 AM

Dear Mr. Bridgeo:

Thank you for your quick response to my email.

Please provide me with the name and contact information for the City Attorney. Given the failure of the police department to meet the requirements of Maine RTK, I think we need to get these issues into court.

Dwight Hines

copy:

foia-a

Legislative committee

On Tue, Sep 11, 2012 at 1:43 PM, William Bridgeo <william.bridgeo@augustamaine.gov> wrote:
Mr. Hines,

Comments and complaints received by staff via email

I am in receipt of your complaint and your requests.
I am directing this matter to the City Attorney to address.
I do so to ensure that the City is in complete compliance with City and State law and regulations and that you requests are dealt with in a timely fashion.

William Bridgeo

City Manager

From: Dwight Hines [mailto:dwight.hines@gmail.com]
Sent: Tuesday, September 11, 2012 1:36 PM
To: William Bridgeo
Cc: database.sunshine@gmail.com; globalear@gmail.com
Subject: Augusta Police Department fails to comply with Maine RTK laws and request for information on Augusta Muni bonds and economic contracts and grants

Dwight E. Hines, Ph.D.
715 Green Woods Road
Peru, Maine 04290
207-562-4701

September 11, 2012
First Class Mail and william.bridgeo@augustamaine.gov

William Bridgeo, City Manager
City of Augusta
16 Cony Street
Augusta, ME 04330

Dear Mr. Bridgeo:

I have had problems in obtaining public records requests, made pursuant to Maine Right to Know Law, to the Augusta Police Department. Please see attached letter re-requesting documents I requested over two weeks ago. I spoke with the Assistant City Manager about the problem in person about two weeks ago.

When I told the Chief of Police that I gave his Department an "F", he did not seem concerned. He did say that he had two people responsible for records. It appears that both individuals are unconcerned enough not to respond to my requests.

So, please accept this letter as a formal complaint about the failure of the Augusta Police Department to comply with Maine Right to Know Laws and as a request, pursuant to Maine RTK Laws, for an opportunity to review any and all outstanding municipal bonds for the City of Augusta.

Second, pursuant to Maine RTK, please provide me with a date, time and place to review any and all current state and federal contracts for economic development.

Sincerely,

Dwight Hines

Copy:
FOIA
Open Government Police Accountability Project (USA & Europe)

Comments and complaints received by staff via email

Forwarded by Dwight Hines

Thu 9/6/2012 5:07 PM

2012 Consumer Health IT Summit
Expanding Access to Health Information

Due to an overwhelming response, this event has reached capacity. You can view the live webcast at www.hhs.gov/live on Monday at 10 am EDT.

At this year's Consumer Health IT Summit we are celebrating the progress the public and private sector have made in making health information more easily available to consumers and engaging them to use their data to improve their care and well being. This year we are taking this movement to the next level.

For more information about this event, please contact Alison Banger at abanger@rti.org.
Replace this text with the content of your email message.

This service is provided to you by
The Office of the National Coordinator for Health Information Technology.

Forwarded by Dwight Hines

Tue 9/4/2012 11:00 AM

----- Forwarded message -----

From: Patrice McDermott <info@openthegovernment.org>

Date: Tue, Sep 4, 2012 at 10:53 AM

Subject: Policy and News Update for September 4, 2012

To: dwight.hines@gmail.com

In This Issue: [click on the link to go to the corresponding section]

Comments and complaints received by staff via email

News from Coalition Partners & Others

I. First Anniversary of US' Open Government Partnership National Action Plan: September 20

Also, don't miss on our website: 10 Open Government Questions for 2012 and New Step Toward Making Sure the Government Can Find and Share E-Records

News from Coalition Partners & Others

NFOIC Launches New Open Government Newsletter

The National Freedom of Information Coalition (NFOIC) published its inaugural newsletter, FOI InSight, on August 23rd. The newsletter highlights state-based open government work, aggregates open government news, and offers analysis on freedom of information issues.

Sunlight Releases New Report on Public Access to Bulk Data

The Sunlight Foundation partnered with the Cornell Legal Information Institute and GovTrack.us to create a "roadmap" for Congress's Bulk Data Task Force to provide bulk access to legislative information for the public. The report provides recommendations for updating THOMAS to take advantage of the data's potential and open up legislative data for all.

National Security Counselors Seeking Legal Interns for Fall

National Security Counselors is accepting applications for its legal intern program. The part-time position and application requirements are detailed here.

I. First Anniversary of US' Open Government Partnership National Action Plan: September 20

In honor of the first anniversary of the release of the Open Government Partnership National Action Plan (NAP), OpenTheGovernment.org will be releasing an interim progress report on the Administration's efforts to implement the plan. The NAP (which we applauded for the breadth of its commitments) addresses three broad challenges, and includes 26 commitments to help achieve 17 goals. While the Administration does not intend to have enacted this plan in its entirety until January 2013 – a date that will put the US in sync with the majority of countries participating in the Open Government Partnership, the one-year progress report will show what steps the Administration has taken thus far, and how much work is left to be done in the remaining few months.

In January OpenTheGovernment.org will release an over-all assessment of how well the Administration implemented the NAP. That assessment will look at both whether the Administration met the letter of the individual commitments, and if the Administration stretched itself beyond the commitment to fulfill the underlying goal.

[Click here to unsubscribe](#)

Mon 9/3/2012 7:24 AM

Sent by Dwight Hines

These songs and videos are a treat. But Maine needs its own RTK song.

<http://www.opengovernmentrecords.net/drupal/node/18>

dh

AND, if you are good with a camera or cellphone camera:

On Mon, Sep 3, 2012 at 5:44 AM, Lydia Medland <lydia@access-info.org> wrote:

Dear All,

We are very pleased to announce three prizes for the "I have a right to Know!" photo contest! The top prize will be €500, followed by second and third prizes for €300 or €200. We hope that this will help spread the message about the competition within and beyond the members of the FOIANet and allow us to come back with some powerful images that help us transmit our message about the right to know around the world.

Comments and complaints received by staff via email

Please see full details below and don't forget that the deadline is the 12th September.

All the best and have fun with your photo-taking!

Lydia

Please circulate widely information about the contest:

www.foiadvocates.net

10th Right to Know Day Photo Contest: "I have a Right to Know!"

This year people working all over the world to promote the right of access to information will celebrate the 10th anniversary of Right to Know Day, on the 28th September. To mark the occasion we are launching a photo contest open to members and non-members of the network. Anyone who feels able to illustrate the right to information, transparency, accountability and openness through photography is welcome participate.

The winning photo will be used on the front cover of the international publication Right to Information World Advocacy Update which is to be launched on Right to Know Day this year by the FOIANet. Photos submitted may also be exhibited at a later date at international transparency and anti-corruption forums. More information on this coming soon!

The Jury will award three prizes, for a total of 1000 EUR, generously made available by the Open Society Institute. The prizes will be distributed as follows:

1st prize: 500 EUR

2nd prize: 300 EUR

3rd Prize: 200 EUR.

Terms of agreement and submission forms in English, French and Spanish can be found on the website: www.foiadvocates.net

Fri 8/31/2012 10:59 AM

I went to a land use appeals board meeting last night and it was downright pleasant. Lots of people attending. There was some disagreement but no one was insulted by the board. Indeed the Appeals Board let everyone speak and they were good about telling us what was required for standing (I did object because standing should include aesthetics).

The Appeals Board demeanor, attitude, and competency was a real contrast with the autocratic "we don't need no stinkin' information from tax-payers" Board of Selectmen in Peru. It's going to look quite obvious in the videos when selections from the Peru Board of Selectmen meetings are played next to selections from Appeal Board meetings.

It sounded like to me that the planning board did their homework and made the right decision based on the information they had, Unfortunately, I don't think there was adequate notice either to the adjacent homeowners or to the public at large -- but I will verify if public notice for the planning board was published in the newspaper and if it included any public mention of the property having been designated a "Brown Fields" subject to extensive remediation from 2003-2007.

So, there is hope. Time to expand the Appeals Board's responsibilities to include decisions made by the Selectmen.

Comments and complaints received by staff via email

Thank you, Martha for videotaping the Appeals Board meeting.

Dwight

P.S. We need a name for law enforcement officers who are serial offenders for public records requests.

Thu 8/30/2012 5:57 AM

It would be good to have someone do some animations (could be stick-figures) on law enforcement and money flows as influenced by information.
The Canadians could help here.

DH

----- Forwarded message -----

From: **Center for International Media Assistance** <cima@ned.org>
Date: Tue, Aug 28, 2012 at 11:26 AM
Subject: New CIMA Report - A Video Revolution
To: dwight.hines@gmail.com

Dear dwight,

CIMA is pleased to release its latest report, The Video Revolution, by veteran journalist and freelance editorial consultant Jane Sasseen. The video revolution is part of the broader revolution of social media and citizen journalism that has swept the news media in recent years--and the impact of the two cannot be separated. Citizen journalists across the globe are using blogs, Twitter, Facebook, YouTube, and other new tools to spread articles, blog posts, videos, and photos of news happening in their countries. The new video journalists use these broader tools as well, taking full advantage of social media to share their videos and tell their stories to a wider audience. This report traces the dramatic rise in the use of crowd-sourced video and examines how this is affecting the international news media landscape. It offers recommendations for the media development community for harnessing the power--while mitigating the dangers--of citizen-shot video.

The Video Revolution is available for download, along with CIMA research reports and videos of CIMA discussions and events, at <http://cima.ned.org>. Also on the website is a comprehensive bibliographic database of media assistance resources with information on more than 1,100 reports, articles, books, and manuals related to the media assistance field. We welcome suggestions for additions to this bibliographic database.

For more information on the Center for International Media Assistance, please explore our website at

<http://cima.ned.org>, or contact us at CIMA@ned.org.

Comments and complaints received by staff via email

Mon 8/27/2012 9:52 PM

Need some help here.

There are questions about the integrity of a specific deputy when he is acting in a political/administrative capacity that I, and others, believe make any testimony he provides under oath in Maine State Courts dubious (falsus uno, falsus omni), at best.

The Maine State Court Records have not been converted to electronic files so it will be necessary to sample, you remember, taking a small number of cases to determine frequency of testimony by specific individuals and then going into the individual cases to determine what type of testimony was provided, and then contacting the defense attorney, or public defenders, to get copies of transcripts. It's Enough work to make an atheist pray for electronification of all court documents.

Someone should have set this up as a procedure that satisfies Daubert and its daughter requirements, if not NACOLE, then the New England Center for Innocence Project.

Let me know.

Dwight Hines
IndyMedia

Sat 8/25/2012 6:46 AM

Peggy - Life is been busy and I missed the recent meetings, Given some of the discussion via email, and my own experience (mostly much better than the discussion), I was wondering when the town was suppose to appoint the individual to be the key recipient.

Thanks

Jarryl Larson, Edgecomb

Fri 8/24/2012 10:38 AM

Dear Lt. Read:

I can not be there until the end of next week. Thursday or Friday. According to the law, you do not have to be present, you can delegate or simply put the information on the web.

I have filed formal complaints about your failure to comply with Maine Statutes. It will take time for those complaints to move through the system and I will continue to make public records requests to you. Make no mistake, you have an F now and delays in complying with future requests will be used as adverse inferences against you and your entire department.

Comments and complaints received by staff via email

Dwight Hines

On Thu, Aug 23, 2012 at 7:53 AM, Chris Read <chrisr@augustamaine.gov> wrote:
Mr. Hines,

Fri 8/24/2012 10:25 AM

Oh man, have you struck the gold mine of local government waste. Get this into court. This is financial abuse and waste times 50.

She is not managing her information and look at what per cent is real business and what percent is spam and what percent is betting on horses, etc. AND, how many of the emails, sent and received, are political -- paid for by the tax payers who don't agree with the politics.

Find out how much money was spent on the hardware and software and how much in training her and others -- especially check out travel expenses to a location, overnight etc, for her to be trained.

Call the vendor for the email software, or better yet, go to the high school -- any high school in Maine -- and check in with the front office and get the computer instructor to recommend a student you can pay to show you how quick and easy it is to make a copy of all the emails to a thumb drive. If they are not familiar with the email system being used, get a copy of the manual for them. Time them in what they do. Better yet, talk to the school about making this a contest -- \$250 dollars to the student who can make the copies in the shortest period of time.

Also, get a copy and read her job description and get a copy of the advertisement for her position. Some body is way off base but you have to document.

I think what she did was fraud, but you have to show she knows how to copy the emails before you can make that allegations. You do have the option of taking her and the town to court to get your money back. I'm not sure how small claims court works here, but you definitely have a strong claim. Ask any computer science teacher.

I bet the budget for information technology for Falmouth is half a zillion dollars a year, with 10% just for training. And the purchases and leases are not one time events. Look at the totals, including the salaries of IT people, for the past five years.

Post your column from today on the FOIA-L list.

Dwight

Fri 8/24/2012 9:58 AM

More Hospitals Begin to Apply Lessons from Seven Pillars Process

<http://iom.edu/~media/Files/Perspectives-Files/2012/Commentaries/VSRT-Seven-Pillars.pdf>

Carolyn M. Clancy, MD, Agency for Healthcare Research and Quality*

August 2012

When the family of Michelle Malizzo Ballog found out that their daughter's 2008 death had been caused by a preventable medical error, one question trumped all others: How could this have happened?

To the family's surprise and relief, officials at the University of Illinois Hospital and Health Sciences System (UIHHSS) in Chicago did not defer that question to their lawyers. Instead, they investigated their

Comments and complaints received by staff via email

sus- picion that a fatal error occurred during Ms. Ballog's surgery, confirmed that information with the patient's family once it was estab- lished, apologized, and provided a financial settlement for Ms. Ballog's young children. Importantly, the hospital made changes in their anesthesia processes to ensure that the same error would not happen again.¹

The Seven Pillars Process

This approach, known as the "Seven Pil- lars," was adopted by UIHSS in 2006. It is a notable exception in our nation's health care system, which still relies heavily on the medical liability system to sort out the myri- ad issues involved in investigating, address- ing, and preventing patient safety events. (A full- disclosure policy that was adopted in 2001 by the University of Michigan Health System is credited with reducing costs per claim by 50 percent and earning approval of 98 percent of the system's faculty physi- cians.)²

Seven Pillars focuses on transparency to eliminate patient harm and learn from patient safety events. It includes:

SNIP -- attached

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

August 22, 2012

Dear Sirs and Madams:

The Augusta Police Department is way out of compliance with Maine Public Records requirements, just as they are out of compliance with equal enforcement of the laws. It stuns me that the Winthrop Police Chief sent me an email that he will comply at his convenience to my public records requests. Given that the Attorney General does not now, and has never enforced violations of the Maine Public Records Act, it is time to:

1) Commission a "singable song" contest about Maine Law Enforcement -- \$250 dollars and a "Certificate of Merit and Honor" for the best submission. I'm not good with writing tunes, but I hope we come up with something syncopated, lots of counterpoints, something hummable, with a few embedded child whimpers and feminine screams for clarity of intent. Real names of real people must be used in the song so their is no fuzziness or confusions about who has failed in their sworn duties and how and when and where they have failed.

2) Notify Governor LePage that his own bureaucracy is not only not enforcing Maine laws that are core to economic development, but are helping mask, if not encourage, domestic violence through poor record keeping and weak to absent intake and investigation procedures -- procedures that Augusta Police Department can not locate and the Winthrop Police Department are taking weeks to produce because they have to remove those sections that are confidential, even though there are no exceptions for policy and procedure manuals to the Maine open records laws.

3) Seriously consider taking federal legal action against the Governor of the State of Maine, The Honorable Paul LePage, to force him to order the Attorney General of Maine to investigate and prosecute violations of the Maine Public Records Law, and related laws.

4) Notify ALNAP (Active Learning Network for Accountability and Performance in Humanitarian Action) and request help in quantifying the negative impact of these failures of law enforcement on economic development and human suffering for the State of Maine.

Comments and complaints received by staff via email

5) Bring these multiple violations of the Maine Public Records laws, and related laws, to the attention of the Joint House and Senate Committee on the Right to Know, and to the attention of the Joint Judiciary Committee. I've observed the RTK committees for many hours. Under the excellent leadership of Senator David Hastings, they have worked hard and long hours, being supported by diligent and learned counsel (Margaret Reinsch and Colleen McCarthy-Reid), to recommend specific improvements to the Maine Open Records Laws.

Dwight Hines

Copy:
Florida Folk Music List
Maine Folk Music List

Mon 8/20/2012 6:38 AM

As long as there are no consequences for delay of responses (Police Chief Young in Winthrop, Maine, told me in person, and emailed me, that he will respond at his convenience. Obviously, there are problems in Winthrop, they still have not produced their annual report, and such sloppy practices are good indicators for the vulnerable groups in a community.

I suggest that the Attorney General take a few cases of such constructive denials and make them high profile prosecutions and that the Economic and Community Affairs Department refuse to fund any projects until the applicants certify that their core records, as defined in the Rules of the Maine Archivist, are on the internet.

The issue of charges is just a way to inhibit, block and thwart the most valuable resources in the community (residents) from meaningful participation in local government. Odd, isn't it, the major problem that almost all local governments reported as having in the Maine Municipal Association/ University of Maine survey, a survey that was conducted properly, last year was the low levels of citizen participation in local government. Duh!

Dwight Hines
IndyMedia

Sun 8/19/2012 7:55 AM

My name is Richard Cayer and I am from Madawaska. I have been requesting for information under FOAA from our town that is readily available such as permits issued and I was required to pay \$325.00 in advance. I was advised that the request to see the permit book could take up to 60 days. Actually this was an improvement since many of my past FOAA request were simply ignored. In the end they sent me a stack of useless documents a practice used by DEP for a request that I made to that department a few years ago.

I was also refused to attend a public meeting for a public boat landing without any explanation, by our town managers, Inland Fisheries and Wildlife (Commissioner Danny Martin) Department of Conservation Powell, and other public officials.

Whatever happened to our first amendment rights of public participation?

Comments and complaints received by staff via email

Please continue to keep me informed.

Richard Cayer
Madawaska

Sat 8/18/2012 11:43 PM

Peggy – I hope you can make the right people aware of the sentiments expressed here-in about the cost of records – especially records being provided in electronic format.

FOAA supporters – let's all get together at the next subCommittee meeting

Kenneth A. Capron
WatchDog Nation on WMPG 90.9fm
Wednesdays, 8:00-8:30pm
Portland, Maine
207-797-7891
watchdog@maine.rr.com
www.maineconomyinstitute.org

Sat 8/18/2012 6:34 PM

I would like to add something here:

There should be positively no fee for access to records. There should be no fee for the time it takes a public employee to provide scans of paper documents in electronic format or to provide electronic copies of documents that are already in electronic format.

These people are already compensated for their time by the public and being accountable for their activities and providing information regarding their activities is part of their responsibilities to the public... once again, for which they are already compensated.

Paul Breton
Freeport, Maine

Sat 8/18/2012 6:02 PM

Great commentary Dwight. Spot on. But let me make one point – about who exactly the AG's office works for. I had the experience of a FOAA request in 2004 against a state Bureau. The AG defended the Bureau's right to withhold records by asserting a price of \$1700 for 300 records. I can help but wish that the AG worked for the people first and let the agencies and departments fend for themselves. There is a huge conflict of interest in the role of AG in FOAA cases. It is just wrong.

Comments and complaints received by staff via email

Ken Capron

From: Dwight Hines

Sent: Saturday, August 18, 2012 9:01 AM

To: Watchdog

Hey everyone:

My feeling is that almost all the places I've been to in Maine to make public records requests, the attitude is that they respond to requests with the attitude that it is to be at their leisure, if at all. There is a mentality in Maine that is the grounds for all the Fs we are awarded by the national groups like PIRG, the Sunshine Foundation, and Forbes Magazine that the local governments are above such concerns as open records or strategic information plans. The failure of the Maine Attorney General to even bring one case on open records, much less expect the Economic & Community Grants to require compliance with open records laws prior to funding has more than an effect than just on transparency in government. I think we will be able to show that substantive and significant amounts of the variance in domestic violence in Maine counties, can be accounted for by failures in the rule of law. Such failures not only create harms to individuals but if you talk to local businesses in different towns, but cause harms to our economies.

Governor LePage I think is trying to do the right things, but he is being submarined by an entrenched bureaucracy that has no desire to promote or require compliance with Maine public records laws.

It is time to start considering an old "southern strategy", sue the governor and force him to order the Maine Attorney General to investigate and prosecute fact based allegations of violations of records violations, be they by the police, or fire departments, or local boards.

There is no way that Maine is going to be able to thrive during the "economic winter" (MHPC) without going to evidence based policies and decisions. But first, we have to make the data available.

Dwight Hines

IndyMedia

Maine

Thu 8/16/2012 4:42 PM

Hi Peggy,

I haven't kept up with all the activities related to Maine's FOIA legislation, but I am still interested.

I would like to make one recommendation though.

The amounts charged for records requested seem to vary depending on who is requesting the records and which agency is being asked. And sometimes the average citizen couldn't afford the fees even if they wanted to pay. I have on occasion asked for "access" to records (access is supposed to be free) only to end up with copies (and a bill for the costs of the copies and time incurred). I have also seen a few cases where the same records were provided to multiple parties yet both parties paid full cost for the records. In other words, this charge for public records is a game that is sometimes played irresponsibly.

So I would like to propose a solution that hopefully will remove the game playing. I propose that in each request for records that one option for "access" to the records is that the records be posted to the Internet -- permanently for all to see -- at no cost to the requestor.

I would expect that knowing their records could end up on the web, agencies and departments might just find a way to post records on the web in the first place. Scanning documents is not as cost intensive as

Comments and complaints received by staff via email

photocopying. But better yet, electronically posting documents that come from Word or Adobe or Excel or from mainframes, only requires the cost of storage – which is miniscule nowadays.

If you could forward this to the rest of the committee I would appreciate it. I don't know if my list is accurate anymore.

Kenneth A. Capron
WatchDog Nation on WMPG 90.9fm
Wednesdays, 8:00-8:30pm
Portland, Maine
207-797-7891
watchdog@maine.rr.com
www.maineinstitute.org

Fri 8/10/2012 4:39 AM

This is a 25 page paper that is quite good. It's attached, and link is below.

Ravnitzky

Mike Ravnitzky reports that
"Nine out of 99 federal agencies received top marks from the Department of Justice on how they carried out their responsibilities under the Freedom of Information Act.

Those nine were

The Department of the Interior
FMCS - Federal Mediation and Conciliation Service
OSHRC - Occupational Safety and Health Review Commission
OSTP - White House Office of Science and Technology Policy
OPIC - Overseas Private Investment Corporation
PRC - Postal Regulatory Commission
SBA - Small Business Administration
STB - Surface Transportation Board
USITC - United States International Trade Commission

The DOJ report is posted here:

<http://www.justice.gov/oip/docs/sum-2012-chief-foia-officer-rpt.pdf>

Dwight Hines

Thu 8/9/2012 2:31 PM

Dear Joeillybob:

Comments and complaints received by staff via email

We now have access to WVAC-TV, Channel 7, for our video is good news for those being stymied in obtaining access to public records. We have quite a bit of video from Peru and the different dodges the Selectmen have used and are using, including sham legal opinions and interference with right to petition, false documents, etc., but we need some interviews with elected and appointed officials in Augusta and S. Paris. I did meet the President of MPBN last month and he is a good man but the technical quality as well as the content must be acceptable to a state wide audience to be given good run times.

M., please let your attorney know what is going on with this because some of the outline so far includes the failures of the Sheriff to follow his own rules and the failure of the Maine Attorney General to ever file an open records complaint. We need to get them on the video with their views and interpretations.

Because the International RTK Day celebration (Attached) may be too soon to submit our video, and the FOIA-net folks are ambivalent about video because of the time, etc., we could submit some still pictures, like the pick-up truck bullies (Attached) who try to intimidate folks who go to Augusta to talk with the different state agencies, like treasury (municipal bonds) and the attorney general (failure to enforce Maine RTK and SEC Rules Disclosure). Intimidation tactics are old, old short-term cowardly tactics that only deeply frightened people employ. The tactics need to be addressed by exposure and legal action, especially if the bullies work for state or local government. I don't think they were carrying weapons but that needs to be addressed. My feeling is that the high rate of unreported serious crimes to law enforcement is due partially to street bully tactics. See attached for other reasons from Bureau of Justice Statistics.

More later,

Dwight

Copy: Interested people
NACOLE
SEC File

----- Forwarded message -----

From: WVAC TV 7 <wvactv7@gmail.com>

Date: Thu, Aug 9, 2012 at 8:43 AM

Subject: Re: Help on obtaining rules, guidelines, and requirements for submitting local video to WVAC-TV

To: Dwight Hines <dwight.hines@gmail.com>

Hello Dwight,

The program needs to be in DVD format. It should be at least a half hour in length but no more than two hours long. If the audio is sufficient when played in a DVD player, without having to max out the audio, then it can be aired on the station. If you have any questions or concerns, please feel free to contact me, Monday - Thursday, 8:00 - Noon, at 364-3764 EXT 208.

Pamela Bevins

On Mon, Aug 6, 2012 at 5:10 PM, Dwight Hines <dwight.hines@gmail.com> wrote:

Dwight E. Hines

715 Green Woods Road

Peru, Maine 04290

207-562-4701

August 6, 2012

Management

Comments and complaints received by staff via email

WVAC TV 7

Dear Sir or Madam:

A group of us live in the River Valley Area and would like to make a video on local issues. Please provide us with the rules, guidelines, and requirements for submitting local videos to WVAC-TV.

We do have some concerns about the audio problems that appear to be consistent in the different WVAC-TV programs so we will need a contact person to advise us on engineering or technical aspects of audio requirements.

Dwight Hines

Copy
River Valley Group

forwarded by Dwight Hines

Thu 8/9/2012 8:17 AM

Internal Medicine Physicians Recommend Principles on Role of Governments and Legislation in Regulating Patient-Physician Relationship

American College of Physicians paper expresses concern about laws that cross traditional boundaries and intrude into the realm of medical professionalism

August 8, 2012

(Washington) – The American College of Physicians (ACP) today released a paper, Statement of Principles on the Role of Governments in Regulating the Patient-Physician Relationship, which recommends principles for the role of federal and state governments in health care and the patient-physician relationship. “The physician’s first and primary duty is to put the patient first,” David L. Bronson, MD, FACP, president of ACP, said. “To accomplish this duty, physicians and the medical profession have been granted by government a privileged position in society.”

Dr. Bronson noted, though, that “some recent laws and proposed legislation appear to inappropriately infringe on clinical medical practice and patient-physician relationships, crossing traditional boundaries and intruding into the realm of medical professionalism.”

Pointing to examples in ACP’s paper, he expressed concern about laws that interfere, or have the potential to interfere, with appropriate clinical practice by:

- prohibiting physicians from discussing with or asking their patients about risk factors that may affect their health or the health of their families, as recommended by evidence-based guidelines of care;
- requiring physicians to discuss specific practices that in the physician’s best clinical judgment are not individualized to the patient;
- requiring physicians to provide diagnostic tests or medical interventions that are not supported by evidence or clinical relevance; or
- limiting information that physicians can disclose to patients.

The paper, produced by ACP’s Health and Public Policy with input from ACP’s Ethics, Professionalism and Human Rights Committee, offers a framework for evaluating laws and regulations affecting the patient-physician relationship, rather than taking a position on the specific issues that are cited by lawmakers to impose particular restrictions or mandates.

ACP’s paper states that:

- “Physicians should not be prohibited by law or regulation from discussing with or asking their patients about risk factors, or disclosing information to the patient, which may affect their health, the health of their families, sexual partners, and others who may be in contact with the patient.”
- “Laws and regulations should not mandate the content of what physicians may or may not say to patients or mandate the provision or withholding of information or care that, in the physician’s clinical

judgment and based on clinical evidence and the norms of the profession, are not necessary or appropriate for a particular patient at the time of a patient encounter.”

ACP recommends seven questions that should be asked about any proposed law to impose restrictions on the patient-physician relationship:

1. Is the content and information or care consistent with the best available medical evidence on clinical effectiveness and appropriateness and professional standards of care?
2. Is the proposed law or regulation necessary to achieve public health objectives that directly affect the health of the individual patient, as well as population health, as supported by scientific evidence, and if so, are there no other reasonable ways to achieve the same objectives?
3. Could the presumed basis for a governmental role be better addressed through advisory clinical guidelines developed by professional societies?
4. Does the content and information or care allow for flexibility based on individual patient circumstances and on the most appropriate time, setting and means of delivering such information or care?
5. Is the proposed law or regulation required to achieve a public policy goal – such as protecting public health or encouraging access to needed medical care – without preventing physicians from addressing the healthcare needs of individual patients during specific clinical encounters based on the patient’s own circumstances, and with minimal interference to patient-physician relationships?
6. Does the content and information to be provided facilitate shared decision-making between patients and their physicians, based on the best medical evidence, the physician’s knowledge and clinical judgment, and patient values (beliefs and preferences), or would it undermine shared decision-making by specifying content that is forced upon patients and physicians without regard to the best medical evidence, the physician’s clinical judgment and the patient’s wishes?
7. Is there a process for appeal to accommodate individual patients’ circumstances?

By insisting that such questions be asked of proposed laws before a decision is made on their adoption, legislators will have appropriate guidance before enacting ill-considered laws that “can cause grave damage to the patient-physician relationship and medical professionalism and undermine the quality of care,” concluded Dr. Bronson.

The American College of Physicians is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 133,000 internal medicine physicians (internists), related subspecialists, and medical students. Internists specialize in the prevention, detection, and treatment of illness in adults. Follow ACP on Twitter and Facebook.

Contact:

David Kinsman, (202) 261-4554

dkinsman@acponline.org

Jacquelyn Blaser, (202) 261-4572

jblaser@acponline.org

Thu 8/9/2012 8:14 AM

See attached pdf of RWF report:

Can Publicly Reporting the Performance of Health Care Providers Spur Quality Improvement? Insights from Aligning Forces for Quality . Robert Woods Johnson Foundation, August 2012.

Also, in Maine, the Subcommittee to the Right to Know Committee has voted to drop the exemption from Maine RTK laws for "sentinel" events in Maine hospitals. Good common sense, good research based, good consumer oriented decision. Kudos to the Subcommittees and RTK Committee for courage to make the right decisions on transparency.

Comments and complaints received by staff via email

There will soon be a Subcommittee hearing, with the Maine Physicians' and Maine Hospitals' Associations to testify on how critical it is to keep "sentinel" events exempt from Maine Right to Know laws. At least one hospital Central Maine Medical in Lewiston, has a hit and miss approach to evaluating complaints about physicians, mostly miss.

The hospital and physician testimony is not likely to be evidence-based, and will be fraught with anecdotes meant to scare the committee and to induce empathy for those physicians who accidentally sew up a patient, leaving a motorcycle and some sponges inside. Because Maine Physicians also have the weakest impaired physicians program in the U.S., according to my measures (failure to respond to complaints about physicians, failure to make timely reports on the association's activities to help physicians, even specialists), we can also anticipate their testimony as eschewing any meaningful data, according to Daubert and its daughters.

Our best bet for the hearing is to be sure that someone is there to testify about recent research on transparency, medical information systems, and informed consumer choices. I would like to testify on valid, generalizable, reliable research on costs, which transparency lowers, and quality of care, which transparency improves -- all in support of the subcommittee's decision to remove the RTK exemption for hospitals reporting sentinel events.

I hope someone invites representatives from the Maine Plaintiffs' Bar to testify about how not reporting on "sentinel events" is a crippling, too often lethal approach to health care.

Please circulate to the Exceptions Subcommittee and other interested people.

Dwight Hines
IndyMedia
Maine

forwarded by Dwight Hines

Wed 8/8/2012 11:46 AM

Final reports and more ... for the next few hours

<http://www.aspeninstitute.tv>
<https://twitter.com/#!/search/realtime/%23FOCAS12>

From: Charlie Firestone <aspencs@aspeninstitute.org>

Date: Wed, Aug 8, 2012 at 10:12 AM

Subject: Nuggets from Aspen FOCAS 2012, Towards Open and Innovative Governance - Watch Live Now! Video of FOCAS 2012, Towards Open and Innovative Governance, is now online and you can catch Day 3 LIVE right now at www.aspeninstitute.tv. Also, don't miss out on the #FOCAS12 twitter stream, a lively backchannel on innovating digital governance and fostering transparency.

A few highlights so far:

Toomas Hendrik Ilves is the President of Estonia, which was recently ranked number one in the world for internet freedom by the organization Freedom House. How did this former Soviet state achieve this rating? Estonia's tech-savvy President explained:

"E-governance does not mean putting a 1040 taxation form into HTML. You have to redo things. You have to make it for the user. You have to stop thinking in terms of 19th Century bureaucratic rules where everything is on paper. That ends up meaning redesigning government and how you interact with people." Watch on Livestream.

Macon Phillips, Director of Digital Strategy at the White House, says that to get citizens more engaged in government, information needs to be presented in more meaningful ways:

"In a day and age when people can Google 'education' and 'Obama' and the White House site comes up pretty high in the search results, we have a responsibility to make sure that the content people find is actually stuff that they can understand and not just fact sheets and press releases." Watch on Livestream.

Juliana Rotich co-founded Ushahidi, a web-based reporting platform that uses crowdsourced data to create visual maps of real-time information in crisis situations. Through its hard work and global network, Ushahidi has saved tens of thousands of lives. Rotich knows the importance of sharing data, but she wonders about identity, privacy and ownership:

"There needs to be a shift in thinking about personal data. ... If I own my data, then what are the incentives for me to share that data with the city so that it can truly be a smart city? ... The government needs to perhaps lead in terms of saying 'you own your own data' and 'this is how we can engage with you giving us data and for you to get relevant information back' ... But it has to be a trust relationship where I'm opting in." Watch this on Livestream.

Reed Hundt was chairman of the FCC during the emergence of Internet as a commercial platform. Hundt embraced the new medium and was the first to give the Commission an online presence. Now, Hundt questions whether big data and the capability to individualize information are the next big things for e-government:

"When we talk about government services and combine it with the power of technology and the power of big data, we're on the edge of being able to have government deliver a suite of services to people that is so impactful of every part of their life that it beggars imagination." Watch this on Livestream.

Jeff Gomez is an expert in global transmedia storytelling. He traces the roots of movements like the Arab Spring to narratives, and believes that without these narratives, citizens won't engage in a new world of digital governance. What is needed, in his mind, is a new breed of storyteller who is technically savvy and can work across platforms (i.e. young people). Gomez explains what he calls Transmedia 2.0:

"There is a method for sifting through mountains of data and deriving the information that we need to build an infrastructure around which can be wrapped compelling narrative. Around the skeleton, we can create interactive stories; we are capable of inspiring with popular storytelling. And popular storytelling, we have seen, can mobilize

Comments and complaints received by staff via email

entire populations.” Watch this on Livestream.

Watch FOCAS 2012 at www.aspeninstitute.tv.

Learn more at <http://as.pn/focas12> and be sure to follow us on Twitter @aspences

About C&S

The Aspen Institute Communications and Society Program addresses the societal impact of communications and information technologies, and provides a multi-disciplinary venue for considered judgment on communications policy issues. Visit our homepage, www.aspeninstitute.org/c&s. Also, check out the C&S Facebook Page and become a fan.

This message was sent to clift@e-democracy.org from:

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Forwarded from Dwight Hines Tue 8/7/2012 2:42 PM

Reform in Action: Transparency Drives Transformation
Insights on Measuring and Reporting the Performance of Health Care Providers
In less than a decade, the push for transparency in health care has come a long way. Publicly reported performance data has motivated health care providers to improve their care and led employers to change purchasing habits. And while it has been challenging to reach consumers, that is changing as reports become more meaningful and accessible.

This transparency is at the heart of Aligning Forces for Quality (AF4Q), the Robert Wood Johnson Foundation's signature effort to lift the overall quality of care in 16 targeted communities. Lessons and

Comments and complaints received by staff via email

resources from AF4Q have been combined in a new brief that offers an overview on selecting performance metrics, engaging stakeholders, making performance reports consumer-friendly, and using performance measures to improve quality.

- Read the brief.
- Watch how the Wisconsin AF4Q alliance started using composite measures.
- Watch how the Minnesota AF4Q alliance selects what to measure.
- Watch how the Boston AF4Q alliance measures patient experience.
- See who's reporting on physician and hospital performance.
- Learn more about Aligning Forces for Quality.

You have received this email alert because you have elected to receive information from the Robert Wood Johnson Foundation on: Quality/Equality or Health Policy.

Stay connected to RWJF:

40 Years of Improving Health and Health Care
Learn more at www.rwjf.org/40years.

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

August 6, 2012

Management
WVAC TV 7

Dear Sir or Madam:

A group of us live in the River Valley Area and would like to make a video on local issues. Please provide us with the rules, guidelines, and requirements for submitting local videos to WVAC-TV.

We do have some concerns about the audio problems that appear to be consistent in the different WVAC-TV programs so we will need a contact person to advise us on engineering or technical aspects of audio requirements.

Dwight Hines

Copy
River Valley Group

Thu 8/2/2012 1:35 PM

RE: Guidance on denial of police report review

How does one see courthouse records of convictions, sentencing for non juveniles?

Comments and complaints received by staff via email

This is occurring in our neighborhood we have a right to know why police are responding here so we can take precautions to protect ourselves, children, pets, and property.

I want to see conviction records, courthouse records, all of them. How does one review that?

Pam

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

August 2, 2012
Email and by hand

Ms. Vera Parent, Town Clerk, and
Mr. Tim Holland, Selectman
Town of Peru

Dear Ms. Parent and Mr. Holland:

Pursuant to Maine Public Records Statutes, I am requesting a place, date, and time to review the emails exchanged between Mr. Tim Holland and the Maine Municipal Association for the past 6 months.

Because it will only take a few minutes to make an electronic copy and to email them to me as an attachment, that would be my preference. To avoid the few minutes of effort required to conduct an electronic search for just the MMA emails, an electronic copy of all of Mr. Holland's emails for the past six months would be acceptable.

Dwight Hines

copy:
Maine Attorney General

Wed 8/1/2012 10:22 AM

Hello,

I am one of a group of concerned neighbors in Kennebunk who are living with high incidents of criminal activity in our neighborhood. The police are called to our neighborhood on a daily basis.

Yesterday when I asked the Lieutenant on the phone to allow us to know what the criminal activity is by reviewing the police reports, I was told that I am not allowed to review police reports and that they are not public record. The Lieutenant said we are only allowed to read about any criminal activity in our neighborhood via the newspaper.

I do not believe this is the case. I believe that police reports are public record, and we have a right to know what criminal activity is occurring in our neighborhood so we can make informed decisions on how best to protect ourselves.

Comments and complaints received by staff via email

We are meeting with the police department next week, and I would like this issue clarified as soon as possible. After reviewing Maine law, it appears as though the police cannot deny a resident access to police reports.

I had also gone to the courthouse to review criminal records after being denied access by the police department, and was told I am only allowed one search per day, and any more are \$13 and I must know the exact date of an incident.

How do I as a resident of Maine, access the records? I have to stand in line at the Biddeford Court house, speak to a woman through a window. She demands the exact information on what I am researching and then if I don't have it, she won't help me. Then if I ask her to search via a different way, she says I must pay \$13 for her to type it into the computer.

If there is a suspicious person on my property, and I have this person's name and a vague reference to an arrest for criminal activity via a Google search, how am I supposed to learn more about someone who is trespassing on my property at night?

How am I supposed to learn more information about crime in my neighborhood?

How am I supposed to know that the police department is conducting itself according to the law if I cannot access its records? How do I know where the patrols are, and whether they even exist in my neighborhood, or if they are being conducted in other areas of my town? How can I ensure that public servants are doing their job without access to records? How do I protect myself if I cannot learn what criminal history someone has?

How come Maine does not list a street address for sexual offenders online?

I am very distressed to learn that so much is done to protect convicted child predators' privacy, people arrested for assault, criminal activity, while I am left on my own to protect my child.

Pam Jones
Kennebunk

Tue 7/31/2012 3:57 PM

Dear Ones:

First, last night the selectmen did not allow any discussion about or even consideration of relevant pertinent material documents before having the split vote to not remove Ms. Hussey from the Board. The email I wanted to be included was the one I wrote to Vera requesting the requirements for a petition and received her response from Maine Municipal Association which did not discuss my question, but discussed who should write the ordinance. The discussion centered on "legal opinions" from MMA that are absolutely terrible in the lack of material facts, true complete history, total absence of on target case decisions, and logic that makes me think of 1960s city council discussions about how to avoid integration that went on throughout the south.

Second, Mr. Holland is closing down legitimate discussion, discussions that were allowed for over 200 years before the board decided this year they were unable to keep discussions on track.

Similarly, continuing to refuse to provide copies of the documents discussed in the meeting by the board is a constructive denial of an open meeting. No one can follow the numbers just for the road department that were discussed last night in their heads.

Comments and complaints received by staff via email

Given that all of the documents are created on a computer it would be simple and inexpensive to email them to interested people.

Not allowing discussion, not providing documents, and engaging in sham legal discussions are the best way to keep citizen participation at bay.

Finally, we need to have some social type barbecue events in different place in the county. We did that years ago in Florida where we had multiple problems of corruption. I was just 12 or 13 when discussions started at a barbecue, someone mentioned that they had a friend retiring from the FBI and wouldn't it be great to have an offspring of Kit Carson as our clean house sheriff? Well, it worked. But then, once Dale and his family got settled in and he started cleaning house, about 2 years, he held a meeting and said that the corruption was too deep and that the city had their ways and duval county had its ways and it was not possible to clean them both up. So, he proposed merging the city and the county to destroy those old criminal "family" networks. It worked. It took tons of work, but it happened. Jacksonville is still not perfect, but the waste is way down and economy is doing well, and the system is open to all people.

And I like barbecue.

Dwight

Mon 7/30/2012 7:22 AM

I'm in Maine, a state that is definitely not as economically developed as it should be. It is also a state that Forbes' Magazine continues to rate at rock bottom in being friendly to businesses. Robert Woods Johnson rates the county I'm in (Oxford Count) as being at the bottom or next to the bottom in health factors and health outcomes (premature death, etc.) Now, just recently I received some "legal opinions" from a state agency that were pretty much junk law opinions. No citations to case law, poor and absent logic, terrible coverage of the facts, etc -- the type of opinion a high school graduate could write and one that you hope your worst enemies will get before they go to court.

Questions:

1) Given the success of DOJ (federal) interventions in a number of police departments, pursuant to all the proper laws, for violating numerous civil rights and for criminal activities, and given the importance of the rule of law for health and economic development, what evidence is there that provides robust causal links between shoddy legal advice and the rule of law? It seems intuitive that the police departments, be they in Miami or New Orleans, are not composed of stupid cops and not being stupid would have requested and would have received quite a bit of junk law support before going down the slippery long slopes of corruption. Comments, and any references to cites or sites that are examining weak and corrupt legal practices ("legal Opinions" from attorneys or paralegals) prior to federal interventions would be helpful.

2) Given that corrupt practices weaken, if not destroy credibility and trust in other authorities (eg, loss of trust in corrupt police and legal agencies generalize to other agencies, like health and welfare, are there any studies completed or in progress that show improvements in premature deaths and other health outcomes and health factors after a successful federal intervention in a law enforcement agency? Cites and sites please.

3) Given that the rule of law provides businesses some predictability in dynamic competitive environments, are there measurable changes in economic development, including rate and quality of innovations, after federal interventions in law enforcement agencies? Cites and sites please.

Comments and complaints received by staff via email

4) We need data, and the feds may have all we need, to examine and estimate the costs, in human pain and economically, of the feds waiting far too long to intervene to stop corrupt practices in local law enforcement agencies. Think about this and you realize it's not a trivial question or problem. We don't want the DOJ continually providing oversight, that is the path to a loss of local control and a loss of common sense because one size does not fit all wrt law enforcement. Yet, we also don't want communities losing what they value, or perceiving they are losing what they value -- that is the way for the loss of a community's soul (See the excellent work by Knight Foundation on "Community Soul") -- because DOJ waits to long for optimal intervention.

5) Maine recently received another set of Fs for their open records laws and practices from the Sunshine Foundation. Given that a good study has shown that about after a year or so after a state passes strong open records laws federal prosecutions for corrupt activities increase substantively and significantly, it would appear that it's time to realize that good logic would indicate the reverse may be true: poor open records laws or poor enforcement of open records laws (Maine attorney general has never ever prosecuted an open records violation), not only mask corruption but interfere with economic development. The links between health outcomes, premature deaths, etc., may be more difficult to establish but my gut tells me that the quality of rule of law practiced in a community will more reliably predict health outcomes, like premature death, than the number and quality of local physicians, or size and technology of local and regional hospitals, or the amount of money spend on health care. Hey, LeeRoy, these are not for Aristotelian arguments, these are testable statements.

Dwight Hines
IndyMedia
Maine

Thu 7/26/2012 3:19 PM

I'm in Maine and the state has an agency, or quasi-agency, Maine Municipal Association (MMA), that provides insurance to most of the towns and cities, as well as providing legal advice to the selectmen and employees. I have read several recent opinions from the MMA Legal Department and, to be frank, they are shoddy. No citations to any case law, disorganized (one was written by a non-attorney), no attempt to determine what conflicting facts existed, and no specific citations to state statutes. They provide opinions but do not represent the towns in court.

I'm not sure about other states, but to call these writings "Legal Opinions" is an insult to those folks who have worked hard to obtain a law degree and who work hard to provide good legal representation. A secondary issue is that of antitrust - a state agency taking money to provide low quality legal work not only reduces competition from private attorneys but it reduces innovation at the same time — a state agency is not going to innovate or challenge the laws that protect them or the towns from being held accountable.

Now, FOI comes in because the town does not provide copies of documents that are discussed in meetings, as they are required to do, and responses to requests are delayed, and some times partial or incomplete. Public discussion at board meetings is severely restricted.

Question: Does anyone know of qualitative evaluation methods and quantitative evaluation approaches that will allow assignment of grades to one page "legal opinions"? There must be some grading systems because law schools teach legal writing.

Let me hear from you because if FOIA requests are being denied based on shoddy or low quality legal work, the problems need to be addressed with the state and federal bars because the town employees and

Comments and complaints received by staff via email

officials are going to read the opinions much like people read their horoscopes, looking for general statements that support what they believe, regardless of the consequences they face.

Dwight Hines
IndyMedia
Maine

Tue 7/24/2012 7:30 AM

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

July 24, 2012

Ms. Vera Parent, Town Clerk
Peru, Maine

Dear Ms. Parent:

Just a reminder on my July 18, 2012, public records request to review the contract, which Mr. Pulsifer identified last night as an "interlocal agreement" and as a "quasi-contract" between Peru and Emergency Medical Services. I believe that it is important that the Town of Peru have at least one copy of the agreement or contract.

As you know, Peru has a number of problems, that are not getting cleared up, that range from failure to notify the Securities and Exchange Commission of material changes in the ability of the Town of Peru to pay its municipal bonds to failure to follow common law and long established practices for public participation in Selectmen's meetings, to the refusal of the Board to correct false documents and their failure to honor the right of citizens to petition. I am starting to believe that needed changes to directly impact the improvement of residents' health (For the past three years, Oxford County has been at the bottom or next to the bottom on health factors and health outcomes -- including the highest premature death levels, for all of Maine Counties.), welfare (the Rule of Law is necessary for economic development), and trust in the system will require court actions.

Pursuant to the new and improved Maine public records law, I am copying the Assistant Attorney General to request that she consider becoming involved in my particular request for the EMS interlocal agreement and the concerns of others on poor and irregular government practices in Peru. I'm not sure if the Attorney General will respond, even though his office was notified yesterday about Maine's latest F grades for our open records laws and practices, because he is running for a new office and that likely is taking most of his time.

Because we are now past the five day deadline for your responding to my request before I initiate court action, please let me hear from you today.

Our discussion with Mr. Pulsifer last night was interesting, although I disagree with him totally about the ability of Mainers to govern themselves. I've taught and been involved in research in Maine over the years and Maine people can compete easily with people in other states and countries. To expect less is to insult their abilities and places very real limits on their rights and benefits under our democratic capitalist system.

Dwight Hines

Comments and complaints received by staff via email

Copy:
Linda Pistner, Assistant Attorney General
Jim Pulsifer

Mon 7/23/2012 2:15 PM

Maine ranks, once again, with the lowest of low.
Dwight

=====

Dear FOI-Lers:

Check out latest State Integrity investigation into state public records laws

http://www.stateintegrity.org/flawed_open_records_laws_limit_public_access_to_state_government

Barbara

Barbara Croll Fought
FOI-L owner/manager

Associate Professor | Broadcast & Digital Journalism | Communications Law

S.I. Newhouse School of Public Communications | Syracuse University
Room 448 | Newhouse 3
215 University Place | Syracuse | NY | 13244
315 443 4054 315 443 3946 (fax)
bcfought.expressions.syr.edu | readyreporter.syr.edu | @bcfought | @readyreporter
bcfought@syr.edu

Tue 6/26/2012 9:20 AM

Dear Dawna:

Your mother must have been a southerner because your name is spelled the way we pronounce Donna in the south, and you are also ready to declare war and secede from the union.

Now, take three deep breaths and know that I admire and completely support what you say, but the strategy you are advocating is close to a scorched earth strategy. We need to take the high road and not make this personal. RIght now the main issue is an employee of the town can not be a Peru selectperson -- it is a conflict of interest.

I have obtained, pursuant to a Maine FOAA request to Vera, the sole legal opinion from MMA that the board feels supports their argument. It is junk and I will complain about it to the Board, to MMA and to the Maine Bar. No matter what someone may think or not think about a specific select person, they are our elected representatives and deserve good legal advice, which MMA did not provide. Ms. Hussey and her brother did a lot of good things for Peru and I hope they continue to do the good things. The bad thing about a lazy attorney is that they hurt the person they are supposed to be representing more than anyone else.

Comments and complaints received by staff via email

More later, I have to get a formal complaint in to the justice department on some folks involved in bid rigging and unfair and deceptive practices today. But, I will keep on the legal aspects, to wit: Ms. Hussey is voting as a select person and she is not in office legally at this time. Her votes will be subject to cancellation and so on. I will copy you on what I write to MMA, to the Peru Board, and to the Maine Bar, and to the Maine Attorney General.

What bothers me now is that after Vera gave me the half page of what is being called a legal opinion, she said last night that the town contacted MMA three times for legal help. She didn't give me those records. Cuss. Cuss.

Dawna, you know more about the law than all of us put together so go out into the garden and pull weeds until you feel calm and then think about what organizations and agencies can help us get this into court pronto.

One thing I'm seriously considering is filing a complaint against MMA for legal malpractice and false and misleading advertising. They are charging us \$5,000 dollars a year and they are giving worse than worthless advice, advice that a first year law student would know was in error in substance and style and facts.

Keep the faith,

Dwight

On Tue, Jun 26, 2012 at 6:09 AM, Dawna Kazregis <dkazregis@roadrunner.com> wrote:
This came to me last night as an idea-what do you think? Please circulate to your friends and family who are Peru voters.

Recall Petition

We, the qualified voters of the Town of Peru, from which Kathy Hussey was elected as Selectman, demand her recall. The grounds of this demand for recall are as follows:

Failure to appropriately carry out the duties and responsibilities of the office; Engaging in conduct which brings the office into disrepute; Engaging in conduct which displays an unfitness to hold the office; Failure to abide by the No Political Activity ordinance which was voted in by the voters of Peru on June 12, 2012. This recall is effective immediately.

Dawna Kazregis
dkazregis@roadrunner.com
207-357-6186

VISION WITHOUT ACTION IS A DREAM.
ACTION WITHOUT VISION IS SIMPLY PASSING THE TIME.
ACTION WITH VISION IS MAKING A POSITIVE DIFFERENCE....Joel Barker

Thu 6/21/2012 1:58 PM

Peggy,

Please forward this to the Committee as an ongoing example of the problems dealing with Falmouth management.

Thank you,

Comments and complaints received by staff via email

Michael

From: seller99@msn.com

To: npoore@town.falmouth.me.us; fvarney@town.falmouth.me.us

CC: pfelmy@dwmlaw.com; policedept@town.falmouth.me.us

Subject: TOWN NOTIFICATION

Date: Thu, 21 Jun 2012 13:55:14 -0400

Nathan,

I just got the notice for the annual report. It wasn't coded to open on an Apple. This should be fixed immediately.

As Faith would say, "It was a colossal goof."

This is also why I can't open the FOAA protocols.

This is also why I can't open the School Board agenda online.

How's that contract with the VTS coming? I really want to see what this type of technical service is costing Falmouth.

Michael Doyle
766.6644

Judiciary Committee

June 21, 2012

Committee Members:

This past week has been an interesting one for the FOAA law of Maine. I have discussed the proposed law that Rep. Mary Nelson will introduce this fall in an earlier memo.

This week there was considerable consternation in Falmouth when I requested and received the Town's email contact list for residents that wanted to be made aware of road closings, council meetings, etc. In the list of 3,129 email addresses was the all access email to post directly to the Town's notification site. This caused me to inadvertently send this notice through the Town's site to all addresses, "Check falmouthtoday.me and Comedy Corner." Nathan Poore, Town Manager, and his assistant Melissa Tyron specifically lied to me when I asked if such an all access address was available.

Poore was recently quoted in the Forecaster stating that the Maine Municipal Assoc. had been contacted to start a lobbying effort to bar access to these lists of emails in the State of Maine. When you couple that effort with the proposed Nelson legislation you will effectively close off communication with a large percentage of the population of the State. The only exception will be what the Towns, Cities, and Schools want to have disseminated to the citizens through their controlled outlets. This is contrary to transparency.

Forevermore this has become an information driven society and for democracy to work for everyone, access to the population through emails are crucial for the opposition to be heard and for both sides of an issue to be reviewed and considered by the voters.

Comments and complaints received by staff via email

Whatever false premises the proponents will use to promote this attack on the FOAA law, they must be rejected outright for what they are, an incremental reduction of the ability to insure we have as much transparency in government as possible.

Thank you for your time and consideration.

Michael Doyle
3 Shady Ln.
766.6644

Wed 6/20/2012 11:43 AM

Hi Peggy

It has been suggested that we forward this e-mail to the Advisory Committee. Can I rely on you to bring this to your next meeting and share with the group. It is another example of the abuse of FOAA. We hope that there can be some consideration for the proposed language developed by MMA that will exempt citizen e-mails which are used for important news alerts (one-way communication).

Best regards,

Nathan A. Poore, Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth Maine 04105

Telephone: 207-781-5253 ext 5314
Email: npoore@town.falmouth.me.us

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

-----Original Message-----

From: Tony Payne [mailto:tpayne@clarkinsurance.com]
Sent: Tuesday, June 19, 2012 9:17 AM
To: Nathan Poore
Subject: RE: Web site news and notices posting

Nathan - May I suggest that you forward this with an explanation to Mal Leary and the FOIA advisory committee. Thanks. - Tony

Tony Payne | Business Development Director Clark Insurance | 2385 Congress St PO Box 3543 | Portland ME 04104-3543
Tel: 207.523.2213 | Fax: 207.774.2994
Cell: 207.807.5331

www.clarkinsurance.com

Comments and complaints received by staff via email

Visit me on Linked In

TO THE RECIPIENT: Information contained in this message is CONFIDENTIAL, proprietary, and/or protected by copyright. If the reader of this email is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Clark Insurance by calling (207) 774-6257, or by forwarding this message and attachments (if any) to info@clarkinsurance.com. You are further requested to help us protect the privacy of our customers and business partners by deleting all copies of this communication from your equipment and files. Thank you.

-----Original Message-----

From: Chris Orestis [<mailto:corestis@town.falmouth.me.us>]
Sent: Monday, June 18, 2012 11:37 PM
To: Nathan Poore; Council
Cc: Jennifer Phinney; Edward J. Tolan; Amy Lamontagne; 'William L. Plouffe'
Subject: RE: Web site news and notices posting

<http://www.falmouthtoday.me/>

WE HAVE A WINNER

June 18, 2012

By: Editor

We were looking for the most interesting request to be removed from the email list and we found a winner.

It was Allen Evans of 3 Fox Hall Rd., a 72 year-old resident of Falmouth, and he can be reached at 207.797.4571. His email is ki4dhx@gmail.com<<mailto:ki4dhx@gmail.com>>, which is the use of his short wave radio call sign. He has used "not wanting to have any truck with you", which is something we haven't heard for some time, actually not in this century. So we give special kudos to Allen for the most inventive and angry request to get off the email list. Allen apparently is also in the radical far leftwing moon bat club with Pam Fenrich.

Now in our defense we have to disclose that Nathan Poore, Town Manager of Falmouth, supplied the email address list in a printed form instead of the digital format that would have allowed us to merge both lists and more easily delete those "Allen Evans" types that wanted to be deleted.

The printed list required a lot of work to get it into a useable format. That process will likely cause several more emails to be sent to people who already don't want to receive them because of what Nathan did to you. We are working at making these corrections to the problem caused by Nathan as quickly as we can and we apologize for the misconduct of the Town.

From: ki4dhx@gmail.com<<mailto:ki4dhx@gmail.com>>
To: seller99@msn.com<<mailto:seller99@msn.com>>
Subject: RE: UPCOMING ELECTION
Date: Mon, 11 Jun 2012 20:36:05 -0400

Remove me from your list immediately! You are a fat ass, bumbling, gadfly . a pox on our fair town. I want no truck with you.

-----Original Message-----

From: Michael Doyle [<mailto:seller99@msn.com>]
Sent: Monday, June 11, 2012 8:04 PM
To: seller99@msn.com<<mailto:seller99@msn.com>>

Comments and complaints received by staff via email

Subject: UPCOMING ELECTION

Check www.falmouthtoday.me<<http://www.falmouthtoday.me>> and Comedy Corner

From: seller99@msn.com<mailto:seller99@msn.com>

To: ki4dhx@gmail.com<mailto:ki4dhx@gmail.com>

Subject: RE: UPCOMING ELECTION

Date: Mon, 11 Jun 2012 21:19:07 -0400

You're removed. However because of the way the Town sent your address to me (not digital) you may get several more emails while we work on eliminating dups and deletes.

Congratulations, you're in the lead for the most interesting removal email. We're going to do a story about the winner with their email address, name, and all sorts of fun stuff.

Have a great night.

Michael Doyle

Mon 6/18/2012 12:39 PM

Peggy,

Please forward this to the Committee:

Committee Members:

Falmouthtoday.me was recently informed of Supt. Barbara Powers' continued and ongoing influence in the political process through her position as the head of the School System.

At last Tuesday's election she ordered all candidate signs to be removed on school (public) property while voting was currently being done. This was countermanded by Town Manager Nathan Poore, and the signs were reinstalled by town workers later on the day of the election. It would be difficult to ascertain the impact this had on the outcome of the vote. However, what is not difficult to ascertain is Supt. Powers use of her position to sway the voters using whatever she has available to her. If it's not her online and hard copy newsletter espousing her political agenda she uses her unchecked authority to remove campaign signs.

This is just another reason why we need access to the parent's email addresses to counter balance this behavior and conduct that Powers refuses to cease because of her agenda that we can't fully respond to at this time.

Michael Doyle
Member, The National Press Club

Fri 6/15/2012 12:19 AM

Peggy,

Comments and complaints received by staff via email

Like every adult in America I get hundreds if not thousands of unwanted emails every month. I send them to my junk file and delete them every few days. I'm not a jerk about it and complain to theirs or my own email service.

I CHOSE, three weeks ago, to send "reply all" to your notice email to a group that is related to the Advisory Committee for the FOAA laws in Maine as an EXPERIMENT in what this group's attitude is to Protected Political Free Speech. I have a substantial group that I notify when we post a new story. The only protests I received (less than a dozen) are from your email list that I would think have an agenda that only supports Freedom of Speech, if it's their kind of speech, that fits their kind of agenda. It was disturbing to even see a pretend republican among this group.

I think I may post a story about this group of individuals and how dangerous it is to have an opinion that others not only don't share but complain that they have to delete it, while over 5,000 readers are eager to read the site. One title that I thought might be appropriate is "Advisors to Legislature's Committee on the FOAA Law of Maine's Email List, A Danger to the Law Itself.

I was appalled by this group's reaction.

Michael Doyle
766.6644
Member, The National Press Club

G:\STUDIES 2012\Right to Know Advisory Committee\Comments and complaints via email.docx (10/5/2012 12:23:00 PM)

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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**TITLE 1
GENERAL PROVISIONS**

**CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS**

**SUBCHAPTER 1
FREEDOM OF ACCESS**

• New 2012

§ 400. Short title

This subchapter may be known and cited as "the Freedom of Access Act."

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

Declaration of public policy

- Reason for public proceedings is to aid in the people's business
- Actions be taken openly
- Records open
- Deliberations open
- Clandestine meetings on private property without notice not be used to defeat purposes

- Party alleging violation of FOA has burden of producing evidence that Act violated¹
- The Act's underlying purposes and policies favor disclosure²

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

• New 2011

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

Liberally construe and apply to promote underlying purposes and policies

- Interpretation of the Freedom of Access laws is a matter of law that the Supreme Judicial Court reviews de novo³

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not

¹ Chase et al. v. Town of Machiasport et al., 1998 ME 260, 721 A.2d 636.

² Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140, 837 A.2d 129.

³ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.		
<p>1-A. Legislative subcommittee. “Legislative subcommittee” means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.</p>	<p><i>Legislative subcommittee</i> must consist of at least 3 members and be appointed for the purpose of conducting legislative business on behalf of the committee</p>	
<p>2. Public proceedings. The term “public proceedings” as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:</p>	<p><i>Public proceeding:</i> transactions of any functions affecting any or all citizens of the State by listed entities</p>	
<p>A. The Legislature of Maine and its committees and subcommittees;</p>	<ul style="list-style-type: none"> Legislature and committees and subcommittees 	
<p>B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;</p>	<ul style="list-style-type: none"> Any board or commission of any state agency or authority Boards of trustees of state educational institutions and their committees and subcommittees 	<ul style="list-style-type: none"> Hospital Administrative District subject to FOA laws⁴ “Special civil service study committee” of municipality subject to FOA laws⁵ Court considers four factors when evaluating whether an entity is subject to the Freedom of Access laws: (1) whether the entity is performing a governmental function; (2) whether the funding of an entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action⁶
<p>C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;</p>	<ul style="list-style-type: none"> Board, commission agency, authority of political or administrative 	<ul style="list-style-type: none"> Local school boards subject to FOA laws⁷ Indian tribes when acting in their municipal

⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

⁵ Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (ME 1988).

⁶ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

⁷ Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (ME 1991).

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	subdivision	capacities are subject state laws affecting municipal governments, including FOA laws ⁸ <ul style="list-style-type: none"> • A tribal reservation was acting in its business capacity, rather than its municipal capacity when it entered into lease of tribal land with developer of liquefied natural gas facility. The tribe has more autonomy than a town in light of provisions of Act to Implement Maine Indian Claims Settlement.⁹
D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	<ul style="list-style-type: none"> • Full membership meetings of associations of political or administrative subdivisions 	
E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;	<ul style="list-style-type: none"> • Maine Public Broadcasting Corporation 	
F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and	<ul style="list-style-type: none"> • Advisory/study commissions set up by Legislature or by Executive Order UNLESS the law, resolve or EO specifically exempts from FOA laws 	
G. The committee meetings, subcommittee meetings and full	<ul style="list-style-type: none"> • Statewide interscholastic 	

⁸ Great Northern Paper, Inc. v. Penobscot Nation, 2001 ME 68, 770 A.2d 574, cert. denied 534 U.S. 1019.

⁹ Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53, 896 A.2d 950.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>membership meetings of any association that:</p> <p>(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and</p> <p>(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.</p> <p>This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.</p>	<p>organizations that receive funding from public or private schools and are meeting in regard to interscholastic activities.</p> <ul style="list-style-type: none"> It does not apply to such meetings in which the subject is limited to personnel issues, allegations of interscholastic athletic rule violations, or student athlete or coach eligibility. 	
<p>3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:</p>	<p>Public records defined</p> <ul style="list-style-type: none"> Written, printed, graphic, mechanical or electronic In possession or custody of agency, official or association Received or prepared for use in connection with the transaction of public or governmental business OR contains info relating to the transaction of public or governmental business EXCEPTIONS: 	<ul style="list-style-type: none"> Corollary to FOA laws liberal construction is necessarily strict construction of any exceptions to public disclosure¹⁰ The records of an uncompensated, advisory group created by State officials and acting without legislative mandate to review alleged improprieties are not public records. Courts look at the function the entity performs in evaluating whether an entity or individual, individually or collectively, qualifies as "an agency or public official."¹¹
<p>A. Records that have been designated confidential by statute;</p>	<ul style="list-style-type: none"> Designated confidential 	<ul style="list-style-type: none"> The plain language of the

¹⁰ Guy Gannett Publishing Co. v. University of Maine et al., 555 A.2d 470 (ME 1989).

¹¹ Moore v. Abbott, 2008 ME 100, 952 A.2d 980.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	by statute (see other statutes)	corporation statute does not provide that specific document is confidential, nor does the statute implicitly require salary information supplied to the Superintendent of Insurance to be confidential ¹²
		<ul style="list-style-type: none"> The location of a municipal employee personnel record has no bearing on its protected status under statute (30-A MRSA §2702(1)(B)(5)).¹³
B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;	<ul style="list-style-type: none"> Within scope of a privilege against discovery or use in civil or criminal trials 	<ul style="list-style-type: none"> Compensation records of hospital district's management employees not "trade secrets"¹⁴ "Work product" Privilege against self-incrimination Record subject to a court-issued protective order¹⁵ Compensation records of insurer's board of directors and senior management not "trade secrets"¹⁶
C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the	<ul style="list-style-type: none"> Legislative papers during the legislative session until signed and publicly distributed Working papers of legislators and staff for the session or sessions 	<ul style="list-style-type: none"> The attorney-client privilege does not protect communications in litigation between adverse parties on opposite sides of the bargaining table. The parties did not have a common interest merely because they are willing to negotiate a settlement.¹⁷

¹² Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

¹³ S. Portland Police Patrol Ass'n v. City of S. Portland, 2006 ME 55, 896 A.2d 960.

¹⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

¹⁵ Bangor Publishing Co. v. Town of Bucksport, 682 A.2d 227 (ME 1996).

¹⁶ Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

¹⁷ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>paper or report is carried over;</p> <p>C-1. Information contained in a communication between a constituent and an elected official if the information:</p> <p>(1) Is of a personal nature, consisting of:</p> <p>(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;</p> <p>(b) Credit or financial information;</p> <p>(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;</p> <p>(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or</p> <p>(e) An individual's social security number; or</p> <p>(2) Would be confidential if it were in the possession of another public agency or official;</p> <p>D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;</p> <p>E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in</p>		<p>• New 2011</p> <p>• Public employer labor negotiation materials</p> <p>• Faculty and administrative records of state educational institutions, other than boards of trustees</p>

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
subsection 2, paragraph B;		
F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	<ul style="list-style-type: none"> • Otherwise confidential but in the hands of association 	
G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	<ul style="list-style-type: none"> • Materials related to legislative positions or insurance in the hands of association of political or administrative subdivisions of the State 	
H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;	<ul style="list-style-type: none"> • Medical records and reports of municipal rescue and emergency medical services, except available to law enforcement in criminal investigations 	
I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;	<ul style="list-style-type: none"> • Juvenile fire starter records 	
J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;	<ul style="list-style-type: none"> • Advisory/study commission working papers 	
K. Personally identifying information	<ul style="list-style-type: none"> • Personally identifying 	<ul style="list-style-type: none"> • Sections of an independent

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;	information concerning minors collected/maintained by municipality for recreational and nonmandatory educational services and programs IF ordinance adopted	report of a school employment controversy must be redacted if they touch upon the personal history, general character or conduct of an employee or an employee's immediate family (20-A MRSA §6101(2)(B)(5)). ¹⁸
L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;	<ul style="list-style-type: none"> Security plans, security procedures, risk assessments to prepare/ prevent terrorism if expected to jeopardize physical safety of public personnel. Available to Legislature or municipal officials if further protect from disclosure 	
M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;	<ul style="list-style-type: none"> Information technology infrastructure information 	<ul style="list-style-type: none"> New 2012

¹⁸ Cyr v. Madawaska School Dept., 2007 ME 26, 916 A.2d 967.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
N. Social security numbers;	<ul style="list-style-type: none"> Social Security Numbers 	<ul style="list-style-type: none"> Amended 2011 - see also new §R (was limited to SSNs in possession of IF&W)
<p>O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:</p> <p>(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and</p> <p>(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;</p>	<ul style="list-style-type: none"> Personal contact information for certain public employees 	
P. Geographical information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information;	<ul style="list-style-type: none"> Geographical information of recreational trails located on private land, unless landowner authorizes release 	
Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections	<ul style="list-style-type: none"> Department of Corrections or county jail security plans, staffing plans, security procedures or risk assessments prepared for emergency events if the records would endanger one's life or safety. Information in these security plans and procedures can be disclosed to state and county officials if necessary to carry out duties. 	

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
or members of the State Board of Corrections under conditions that protect the information from further disclosure; and		
R. Social security numbers in the possession of the Secretary of State.		• New 2011 - see ¶N
3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:	• More public records:	
A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;	• Public	
B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and	• Public	
C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.	• Not public: Prisoner's, adult probationer's or parolee's info when Commissioner of Corrections determines detrimental to welfare of a client to disclose	
4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.		
5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.		• New 2012
6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.		
§402-A. Public records defined (REPEALED)	(now part of §402)	
§403. Meetings to be open to public; record of meetings		
1. Proceedings open to public. Except as otherwise provided by statute or by	Public proceedings open to public unless	

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.	<ul style="list-style-type: none"> • Otherwise provided by statute • Authorized executive session pursuant to §405 <p>Required record/minutes open to public inspection</p>	
<p>2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:</p> <p>A. The date, time and place of the public proceeding;</p> <p>B. The members of the body holding the public proceeding recorded as either present or absent; and</p> <p>C. All motions and votes taken, by individual member, if there is a roll call.</p>		<ul style="list-style-type: none"> • New 2011
<p>3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.</p>		<ul style="list-style-type: none"> • New 2011
<p>4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.</p>		<ul style="list-style-type: none"> • New 2011
<p>5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.</p>		<ul style="list-style-type: none"> • New 2011
<p>6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.</p>		<ul style="list-style-type: none"> • New 2011

§404. Recorded or live broadcasts authorized

In order to facilitate the public policy so	Writing, taping, filming, live	<ul style="list-style-type: none"> • Unemployment Insurance
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FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.	broadcasts authorized if does not interfere with orderly conduct of proceedings	Commission proceedings not open to the public so no right to independently record proceeding ¹⁹
§404-A. Decisions (REPEALED)	(see now §407)	
§405. Executive sessions		
Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.	Executive sessions may be held subject to the following:	
1. Not to defeat purposes of subchapter. These sessions may not be used to defeat the purposes of this subchapter as stated in section 401.	<ul style="list-style-type: none"> Not to defeat purposes of FOA 	
2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at executive session.	<ul style="list-style-type: none"> Not to finally approve an ordinance, order, rule, resolution, regulation, contract, appointment or other official action 	<ul style="list-style-type: none"> Employee whose contract was not renewed by school committee was not entitled to relief on ground that committee discussed the nonrenewal in executive sessions where the vote to refuse to extend or renew the contract was made in public meeting attended by employee and her counsel²⁰
3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.	<ul style="list-style-type: none"> Must have 3/5s of the vote of the members present and voting 	
4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of	<ul style="list-style-type: none"> The precise nature of the business to be conducted in executive session must be part of 	<ul style="list-style-type: none"> Record clearly established that Board of Selectmen, before going into executive session to discuss pending

¹⁹ Martin v. Unemployment Insurance Commission, 1998 ME 271, 723 A.2d 412.

²⁰ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.	the motion	litigation, stated that the session was for purposes of receiving from the town's attorney updated status on that litigation, thereby complying with law ²¹
5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.	<ul style="list-style-type: none"> Motions not contained in the motion are prohibited 	
6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:	Only the following deliberations may be conducted during an executive session:	<ul style="list-style-type: none"> Public body charged with violating FOA laws during executive session has burden of proving that its actions during executive session complied with FOA laws²² Any statutory exceptions to the requirement that deliberations be public must be narrowly construed²³
A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or person or persons subject to the following conditions:	<ul style="list-style-type: none"> Discussion of employment issues, subject to the following limitations 	
(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;	<ul style="list-style-type: none"> Only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to 	<ul style="list-style-type: none"> The time for a "reasonable" expectation of damage to the reputation of an employee to be determined is before the executive session is conducted.²⁴

²¹ Vella v. Town of Camden, 677 A.2d 1051 (ME 1996).

²² Underwood v. City of Presque Isle et al., 715 A.2d 148 (ME 1998).

²³ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

²⁴ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	privacy	
(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;	<ul style="list-style-type: none"> The individual can choose to be present 	
(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against him be conducted in open session. A request, if made to the agency, must be honored; and	<ul style="list-style-type: none"> If the individual requests in writing that the proceeding be open to the public, the agency must open the proceeding; and 	
(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.	<ul style="list-style-type: none"> The person filing the complaint may choose to be present 	
This paragraph does not apply to discussion of a budget or budget proposal;	<ul style="list-style-type: none"> This paragraph cannot be used to discuss budget issues in executive session. 	<ul style="list-style-type: none"> Questions asked of employees about fiscal matters during executive session do not amount to discussions of the budget or budget deliberations.²⁵
B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:	A school board's discussion of the suspension or expulsion of a student, with the following restriction	
(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire.	<ul style="list-style-type: none"> The student, parents/guardians, legal counsel may choose to be present 	
C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or	Discussion of property issues that would prejudice the competitive or bargaining position of the public body	

²⁵ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;		
D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;	Negotiations between a public employer and public employees	
E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.	Consultations between a public body and its attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at a substantial disadvantage	<ul style="list-style-type: none"> The mere presence of an attorney cannot be used to circumvent the open meeting requirement by invocation of attorney consultation exception²⁶
F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;	Discussion of records made confidential by statute	
G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and	Discussions of professional licensing decisions	
H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1,	Discussions with municipal officers and code enforcement officer about enforcement of land use laws and municipal	

²⁶ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.	ordinances when the CEO is representing the municipality in court. Similar to attorney-client provision in paragraph E without the requirement that CEO be an attorney	
§405-A. Recorded or live broadcasts authorized (REPEALED)	(see now §404)	
§405-B. Appeals (REPEALED)	(see now §409)	
§ 405-C. Appeals from actions (REPEALED)	(see now §409)	
§406. Public notice		
Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.	<ul style="list-style-type: none"> • Notice required if agency or body consists of at least 3 persons • Timing: ample time to allow public attendance • Manner: reasonably calculated to notify the general public in the jurisdiction served by the public body • Emergency meeting: notify representatives of local media whenever practical. By same or faster means 	<ul style="list-style-type: none"> • One day notice of planning board's additional meeting sufficient under the circumstances²⁷
§407. Decisions		
1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient	<ul style="list-style-type: none"> • Written record of conditional approval or denial <ul style="list-style-type: none"> • Reason/reasons • Findings of fact 	<ul style="list-style-type: none"> • FOA laws require agency to set out its findings with a level of specificity that is sufficient to apprise the applicant and any interested member of the public of the basis of the

²⁷ Crispin et al. v. Town of Scarborough et al., 1999 ME 112, 736 A.2d 241.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
to apprise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.		decision ²⁸
<p>2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.</p>	<ul style="list-style-type: none"> Written record of dismissal or refusal to renew a contract of official, employee, appointee <ul style="list-style-type: none"> Reason/reasons Findings of fact 	<ul style="list-style-type: none"> When local agency conditionally approves or denies a permit, the agency must make findings of fact adequate to indicate the basis for the decision and to allow meaningful judicial review²⁹ The Personnel Committee of a municipality is not required to vote as to each individual reason for termination of an employee as long as the decision included specific findings of fact and conclusions.³⁰

§408. Public records available for public inspection and copying

(See now 408-A)

(REPEALED)

§ 408-A. Public records available for inspection and copying

New 2012, replaces § 408

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee

- Every person
- Right to inspect and copy
- Within a reasonable period of time after request
- Inspection during reasonable office hours.
- No fee for inspection unless record converted or compiled
- When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy"

²⁸ Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865.

²⁹ Carroll v. Town of Rockport, 2003 ME 135, 837 A.2d 148.

³⁰ Quintal v. City of Hallowell, 2008 ME 155, 956 A.2d 88.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
as provided in subsection 8.		the information sought ³¹
<p>2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.</p> <p>A. A request need not be made in person or in writing.</p> <p>B. The agency or official shall mail the copy upon request.</p>	<ul style="list-style-type: none"> • During reasonable office hours • Cost of copying paid by requestor (see sub-§8) • Copy request need not be in person • Mail copies upon request 	
<p>3. Acknowledgment; clarification; time estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within a reasonable period of time, and may request clarification concerning which public record or public records are being requested. The agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.</p>	<ul style="list-style-type: none"> • State acknowledge request for record within a reasonable time • Estimate of time to comply with request 	
<p>4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the request for inspection or copying.</p>	<ul style="list-style-type: none"> • Written notice of request denial within 5 working days of request 	
<p>5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.</p>	<ul style="list-style-type: none"> • May schedule compliance with record request so not to delay or inconvenience the agency's or official's regular activities 	

³¹ Bangor Publishing Co. v. City of Bangor, 544 A.2d 733 (ME 1988).

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p><u>6. No requirement to create new record.</u> <u>An agency or official is not required to create a record that does not exist.</u></p>	<ul style="list-style-type: none"> No requirement to create a record 	
<p><u>7. Electronically stored public records.</u> <u>An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.</u></p> <p><u>A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.</u></p> <p><u>B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.</u></p>	<ul style="list-style-type: none"> State must provide access to electronic record as printed a document or in the medium it is stored at discretion of the requestor unless it would result in the disclosure of confidential information 	
<p><u>8. Payment of costs.</u> <u>Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.</u></p> <p><u>A. The agency or official may charge a reasonable fee to cover the cost of copying.</u></p> <p><u>B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.</u></p> <p><u>C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural</u></p>	<ul style="list-style-type: none"> Does not require agency or official to provide access to computer terminal May charge a reasonable copying fee and a fee to cover cost of searching for, retrieving and compiling the record of not more than \$15 per hour after the first hour of staff time per request May charge for actual conversion costs 	

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<u>comprehension or into a usable format.</u>		
<u>D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.</u>	<ul style="list-style-type: none"> No charge for inspection unless record must be compiled or converted 	
<u>E. The agency or official may charge for the actual mailing costs to mail a copy of a record.</u>	<ul style="list-style-type: none"> May charge actual mailing 	
<u>9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.</u>	<ul style="list-style-type: none"> Estimate of compliance time and costs 	
<u>10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:</u>	<ul style="list-style-type: none"> May require payment in advance if estimated cost exceeds \$100 or requestor has previously failed to pay a fee 	
<u>A. The estimated total cost exceeds \$100; or</u>		
<u>B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.</u>		
<u>11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:</u>	<ul style="list-style-type: none"> Waiver of fees if requestor indigent or release of record is in the public interest 	
<u>A. The requester is indigent; or</u>		
<u>B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.</u>		

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>§409. Appeals</p> <p>1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.</p> <p>2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.</p> <p>3. Proceedings not exclusive. The</p>	<ul style="list-style-type: none"> Refusal of inspection or copying must be <ul style="list-style-type: none"> In writing Within 5 working days of request Appeal from denial within 5 working days of denial to Superior Court Court may issue order of disclosure Expedited Approval of official action in executive session is illegal; officials subject to penalties Superior Court shall declare action null and void if action taken illegally Expedited Other civil remedies 	<ul style="list-style-type: none"> Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request³² Amended 2012 see also 408-A In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling <u>Marxsen v. Board of Directors</u>, 591 A.2d 867).³³ Freedom of Access claim must be filed within 30 days of discovering a possible violation (MRCivP, Rule 80B)³⁴ Burden of proof on agency to establish "just and proper cause" for denial of a FOA request³⁵ Amended 2012 Supreme Judicial Court, sitting as the Law Court, could not create settlement negotiation privilege against disclosure under FOA; Court could only create new privileges pursuant to its rulemaking powers.³⁶

³² Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

³³ Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.

³⁴ Palmer v. Portland School Committee et al., 652 A.2d 86 (ME 1995).

³⁵ Springfield Terminal Railway Company v. Department of Transportation, 2000 ME 126, 754 A.2d 353.

³⁶ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
proceedings authorized by this section are not exclusive of any other civil remedy provided by law.	available	
<p>4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.</p> <p>This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.</p> <p>§410. Violations</p> <p>For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.</p>	<ul style="list-style-type: none"> Reasonable attorney's fees and litigation expenses maybe awarded to the prevailing plaintiff who appealed if the court determines that the refusal or illegal action was committed in bad faith 	
	<ul style="list-style-type: none"> Willful = intentional or knowing Agency or entity liable for civil violation; fine of up to \$500 	<ul style="list-style-type: none"> Penalties for official actions taken in executive session in violation of FOA laws may only be sought by the Attorney General or AG's representative³⁷ Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine³⁸ If a requesting party has undertaken successful appeal of denial, that party is entitled to costs³⁹

§411. Right To Know Advisory Committee

1. Advisory committee established. The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

³⁷ Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.

³⁸ Scola v. Town of Sanford, 1987 ME 119, 695 A.2d 1194.

³⁹ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>2. Membership. The advisory committee consists of the following members:</p>	<p>A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;</p> <p>B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;</p> <p>C. One representative of municipal interests, appointed by the Governor;</p> <p>D. One representative of county or regional interests, appointed by the President of the Senate;</p> <p>E. One representative of school interests, appointed by the Governor;</p> <p>F. One representative of law enforcement interests, appointed by the President of the Senate;</p> <p>G. One representative of the interests of State Government, appointed by the Governor;</p> <p>H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;</p> <p>I. One representative of newspaper and other press interests, appointed by the President of the Senate;</p> <p>J. One representative of newspaper publishers, appointed by the Speaker of the House;</p> <p>K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;</p> <p>L. Two representatives of the public, one</p>	

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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appointed by the President of the Senate and one appointed by the Speaker of the House; and

M. The Attorney General or the Attorney General's designee.

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

C. Members may serve beyond their designated terms until their successors are appointed.

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	<p>right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;</p>	
	<p>C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;</p>	
	<p>D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making the information publicly available;</p>	
	<p>E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;</p>	

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;	
	G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;	
	H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;	
	I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;	
	J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and	
	K. May undertake other activities consistent with its listed responsibilities.	
	7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions	

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.</p>		
<p>8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.</p>		
<p>9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.</p>		
<p>10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public</p>		

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
proceedings and records.		
§412 Public records and proceedings training for certain elected officials		
<p>1. Training required. A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1.</p>		<ul style="list-style-type: none"> • Amended 2012
<p>2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:</p>		<ul style="list-style-type: none"> • Amended 2012
<p>A. The general legal requirements of this chapter regarding public records and public proceedings;</p>		
<p>B. Procedures and requirements regarding complying with this chapter;</p>		
<p>C. Penalties and other consequences for failure to comply with this chapter.</p>		
<p>An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.</p>		
<p>3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or a public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must</p>		<ul style="list-style-type: none"> • Amended 2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following elected officials:

• Amended 2012

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

D. Deleted. Laws 2007, c. 576, §2.

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units; and

H. Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
---------	-------------	-----------------------------

• New 2012

§ 413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit and regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within a reasonable period of time and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

§ 414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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exportability of public records while protecting confidential information that may be part of public records.

SUBCHAPTER 1-A

(headnote revised 2011)

PUBLIC RECORDS EXCEPTIONS AND ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Public records exception.

"Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee.

"Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

3. Advisory committee.

"Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

§432. Exceptions to public records; review

1. Recommendations.

During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

• Amended 2011

2. Process of evaluation.

According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:</p> <p>A. Whether a record protected by the exception still needs to be collected and maintained;</p> <p>B. The value to the agency or official or to the public in maintaining a record protected by the exception;</p> <p>C. Whether federal law requires a record to be confidential;</p> <p>D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;</p> <p>E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;</p> <p>F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;</p> <p>G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;</p> <p>H. Whether the exception is as narrowly tailored as possible; and</p> <p>I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record</p>		

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
---------	-------------	-----------------------------

protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

• New 2011

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines. (repealed)

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

(1) Title 1;

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
---------	-------------	--------------------------------

- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7;
- (8) Title 8;
- (9) Title 9-A; and
- (10) Title 9-B.

B. Exceptions codified in the following
Titles are scheduled for review in 2010:

- (1) Title 10;
- (2) Title 11;
- (3) Title 12;
- (4) Title 13;
- (5) Title 13-B;
- (6) Title 13-C;
- (7) Title 14;
- (8) Title 15;
- (9) Title 16;
- (10) Title 17;
- (11) Title 17-A;
- (12) Title 18-A;
- (13) Title 18-B;
- (14) Title 19-A;
- (15) Title 20-A; and
- (16) Title 21-A.

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
---------	-------------	--------------------------------

C. Exceptions codified in the following
Titles are scheduled for review in 2012:

- (1) Title 22;
- (2) Title 23;
- (3) Title 24;
- (4) Title 24-A; and
- (5) Title 25.

D. Exceptions codified in the following
Titles are scheduled for review in 2014:

- (1) Title 26;
- (2) Title 27;
- (3) Title 28-A;
- (4) Title 29-A;
- (5) Title 30;
- (6) Title 30-A;
- (7) Title 31;
- (8) Title 32;
- (9) Title 33;
- (10) Title 34-A;
- (11) Title 34-B;
- (12) Title 35-A;
- (13) Title 36;
- (14) Title 37-B;
- (15) Title 38; and
- (16) Title 39-A.

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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it determines appropriate and shall notify the review committee of such adjustments.

§434. Review of proposed exceptions to public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

• Amended 2011

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
substantially outweighs the public interest in the disclosure of records;	<p>E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;</p> <p>F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;</p> <p>G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;</p> <p>H. Whether the proposed exception is as narrowly tailored as possible; and</p> <p>I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.</p>	<p>2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.</p>
<p>2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request</p>		<ul style="list-style-type: none"> • New 2011

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
---------	-------------	--------------------------------

procedures and timeliness of responses.

3. **Report.** The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

• Amended 2011

G:\STUDIES 2011\Right to Know Advisory Committee\FOA laws sbs update 2011.doc (9/11/2012 2:49:00 PM)

To: Linda Pistner
Chief Deputy Attorney General

From: Katie Lybrand
Right to Know Advisory Committee Extern

Date: September 21, 2012

Re: Website Improvement Recommendations

You asked me to review the AG's FOAA webpage and make recommendations for improvements. Some of my recommendations are more organizational, while others are substantive. I also examined the RTKAC's website however I do not have any major recommendations for that site. I think that site contains all the information it should, I think it is just a matter of having links on the main FOAA website to make the information more readily accessible.

Organization Recommendations

Related Websites

I think the related websites section could be improved. Right now, it is rather sparse and does not contain much explanatory detail. I think a simple descriptor sentence before/after each link would be useful. I would also create two sections - one for state resources and one for national resources. Here is what I would suggest:

State Resources:

- [Maine Governor's Office](#)¹ The official website for Maine's governor.
- [Maine Attorney General's Office](#) The Attorney General's Office provides the legal services for the State and its agencies. Their website contains the latest news on cases of interest as well as many electronic resources for consumers, and much more.
- [Maine State Archives](#) Search through Maine's history! The Maine State Archives maintains approximately 95 million pages of official State records. They also have several electronic databases and interactive archives available through their website.
- [Maine Government Services Online](#) Look here if you hate waiting in line. Many state and local services, such as payments, registrations, licensing and permit applications, purchases, searches, email notifications and more are available electronically.

¹ Note: all of the links in this document are hyperlinks and should take you directly to the website I'm referring to if clicked on.

- [122nd Maine Legislature - Freedom of Access Advisory Committee](#) Learn more about the legislative committee responsible for ensuring compliance with Maine's freedom of access laws.
- [Information Resource of Maine \(InforME\)](#) Check here for public documents. Many state services and related information are available electronically for InforME subscribers.
- [Maine Freedom of Information Coalition](#) A nonprofit organization that has many resources for Mainers looking for state or national public records, including a public records request letter generator.

I would add the following links to this section:

- [Maine State Legislature](#) Learn about upcoming bills, watch live Senate and House video, and learn how your state representative and senator voted on each bill.
- [Public Meetings Calendar](#) Find state agency meetings and hearings that are open to the public and sign up to receive meeting notices by email.
- [Right to Know Advisory Committee](#) Learn about the activities of the Right to Know Advisory Committee, view annual reports and meeting summaries.

National Resources

- [Federal Freedom of Information Act](#) Read the text of the Federal Freedom of Information Act, which governs public record requests from federal officials and agencies.
- [FOIA Homepage](#) Start here for an overview of the Federal Freedom of Information Act. Explore the website for useful data and reports and learn how to make a FOIA request.
- [National Freedom of Information Coalition](#) A national organization with a website overflowing with useful links, articles and other information for those interested in open government.

Substantive Recommendations

Citizen's Guide

I would make the the Citizen's Guide and Flowchart more prominently available. Right now, it is only available if a user finds it on the RTKAC's website. I think it would be more useful to either have it as a link on the FOAA homepage or as a separate link on the left hand column. It could become its own section, perhaps between the "News and Updates" section and the "How to Make a Request" section. This section could have a brief intro describing the guide and how it will provide a comprehensive overview of the FOAA laws and process for obtaining records. I have examined the websites of several other states and most of them include a similar citizen's guide on their homepage or some other prominent location.

How to Make a Request Section

In this section I would consider adding a sample FOAA request letter. Although the text on this page tells users how to draft a good request letter, it may be useful to have a sample letter

for individuals to base their own letters off of. There is a sample request letter located in the Maine Citizen's Guide to FOAA on page 19 that could be used or referenced.

News & Updates Section

This section looks like it could use some updating, such as a link to the most recent RTKAC's report with a descriptor such as "See the changes to Maine's open government laws passed during the 2012 session" or something similar.. Likewise, the "Legislative Updates," "Court Opinions" and "Sunshine Week" sections also need some updating. In the court opinions section, I think it would be useful to have a sentence or two describing what each case is about.

It may also be useful to include a link to the National Freedom of Information Coalition's website here. Users could be directed to look there for recent updates and reports on important national freedom of information matters.

Frequently Requested Documents

I am not sure how many requests agencies receive, but it may be useful to have some sort of frequently requested documents page. This could easily be accomplished through the use of the "News and Updates" section. For example, if a decision in a case of interest is released or if there is some other hot button issue, there could be a link to that document on the website which could save agencies some time fielding requests. This could even be done for items that do not strictly fall under FOAA. For example, Florida's AG's website has a frequently requested documents section which contains some items that are frequently requested, but probably not state public records within the meaning of their freedom of access law. For instance, Florida has a link to the recent Supreme Court decision on the Affordable Care Act. This section may require too much updating compared with the use it would receive, but it would be an interesting addition to the website.

Newsletter

An interesting addition to the website would be some sort of monthly or quarterly newsletter that summarizes recent developments and features commentary. I saw this type of newsletter on a few non-profit websites and a similar recent updates type document (without the commentary) on several state websites. The Brechner Center at the University of Florida publishes a monthly newsletter and the most interesting aspect of it to me was that it features commentary by journalists, attorneys, and scholars on contemporary issues. For example, one month could be about the impact of social media and technology developments on public records. Although this may be a bit ambitious, I think it would be interesting to at least have some sort of publication like this perhaps a few times a year. This could be a task for the extern as well. This idea would depend on interest from journalists/attorneys/others to weigh in on the issues, and I don't know if that interest is there or sustainable, but I think the idea is compelling. This idea could also translate into some sort of public outreach program where, perhaps twice a year or once a year, the Committee hosts a public seminar type program that is open to the

public. The commentary I suggested for the newsletter could instead be presented at this forum, with time for questions from the public. Again, I'm not sure how much interest there would be in such a program, but it would be a way to extend the outreach of FOAA.

A regular publication or public outreach program may be something to work on in conjunction with the Maine State Bar and the University of Maine School of Law. New York state, for example, publishes a journal of the sort described above, but the New York State Bar, Albany Law School, and State Committee on Open Government all work on its publication.

KATHERINE H. LYBRAND

31 Read St. Portland, ME 04103 | katherine.lybrand@maine.edu | 207.749.5956

EDUCATION

University of Maine School of Law, Portland, Maine

Candidate for Juris Doctor; degree expected May 2013

Staff, Maine Law Review; Dean's List; Top 25%

Smith College, Northampton, Massachusetts

Bachelor of Arts, Government, African Studies, May 2010

Dean's List, First Group Scholar, 2007-10

Pi Sigma Alpha (National Political Science Honor Society)

Activities: Smith College Judicial Board; Class of 2010 Vice President; Gold Key Tour Guide

EXPERIENCE

Research Assistant, University of Maine School of Law

Portland, Maine, December 2011 – Present

Perform research on the Endangered Species Act and climate change.

Assemble information into memos and case tables.

Student Assistant, Garbrecht Law Library, University of Maine School of Law

Portland, Maine, Sept. - May 2010 - Present

Operate sole circulation desk.

Assist patrons in locating resources; shelve books and maintain order in library stacks.

Intern, Office of the Attorney General, Augusta, Maine, Summer 2011

Wrote appellate briefs for the Maine Supreme Judicial Court, sitting as the Law Court, on Child Protective matters.

Conducted research on various environmental issues for Natural Resources Division and compiled research in memos for Assistant Attorneys General.

Intern, Congresswoman Chellie Pingree, District Office, Portland, Maine, Summer, 2010

Answered questions on policy and fielded calls from constituents.

Assisted in casework preparation through form writing, filing and mailing.

Drafted grant support letters and conducted policy research for staff members.

Office Assistant, Camp Nashoba North, Raymond, Maine, Summers, 2008, 2009

Juggled many duties including acting as an assistant to camp director and program director, managing camp store stock and accounts, contacting parents, and filing and organizing 100-150 weekly camper schedules.

